



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
ENVIRONMENT

Brussels
ENV.B.2

Geraint Roberts
Chemical Watch
12, Clare Road
UK - BN7 1PN Lewes

By email: ask+request-8509-1ed8d9ce@asktheeu.org

Dear Mr Roberts,

Subject: Your application for access to documents: Ref GestDem No 2020/5276

We refer to your e-mail of 02/09/2020 and your follow-up email of 07/09/2020, in which you make a request for access to documents registered under the above-mentioned reference number, to our holding reply Ref. Ares(5098777) – 29/09/2020, and to our letter Ref. Ares(2020)5677489 – 20/10/2020 requesting more time for the processing of your request. We sincerely apologise for the delay in replying and for any inconvenience this may have caused.

You requested access to the following: *“documents, including emails, from DGs GROW, Sante and Trade related to the interservice consultation on the proposed chemicals strategy for sustainability which were produced since 1st June 2020.”* In your follow-up email, you wrote the following: *“See my original request - documents, including emails submitted to DG Env by DGs Sante, GROW and Trade in relation to the EU chemicals strategy for sustainability which is under preparation.”*

Please see in the Annex to this letter a list of the documents that fall in the scope of your request. Having examined these documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, we have come to the following conclusions:

(1) Full disclosure

The documents referred to under numbers **5, 7 and 8** in the attached Annex are disclosed in their entirety.

(2) Partial disclosure

The documents referred to under numbers **1, 4 and 6** in the attached Annex contain personal data, which have been redacted. Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data. The applicable

legislation in this field is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('Regulation 2018/1725').

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of Justice has specified that any information, which because of its content, purpose or effect, is linked to a particular person is to be considered as personal data¹.

Please also note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data².

In its judgment in Case C-28/08 P (*Bavarian Lager*)³, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁴.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

¹ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, EU:C:2017:994.

² Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, EU:T:2018:560.

³ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

⁴ Whereas this judgment specifically related to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Furthermore, the documents referred to under numbers **1, 2 and 3** in the attached Annex contain certain information protected by Article 4(3) second subparagraph of Regulation (EC) No 1049/2001. Article 4(3) second subparagraph of Regulation (EC) No 1049/2001 provides that access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken, if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

After having carefully examined your request, I consider that full disclosure of the specific documents would seriously undermine the decision-making process. In particular, they include specific positions, expressed in the form of suggestions and comments that were made by the Directorate-General concerned, as part of the Interservice consultation prior to the adoption of the Chemicals Strategy, with regard to certain crucial parts of the text of the Strategy. Disclosure of these specific positions would seriously undermine the Commission's leverage in the framework of ongoing and future consultation and decision-making procedures, with regard to measures envisaged to be adopted in the framework of the Chemicals Strategy. Thus, in case these specific positions are disclosed, this would jeopardise the decision-making process, protected by Article 4(3) of Regulation (EC) No 1049/2001, and therefore access has to be refused on that basis.

However, the possibility of granting partial access to the documents concerned, in accordance with Article 4(6) of Regulation (EC) No 1049/2001, has been examined as well. Consequently, the documents may still be disclosed after redacting the relevant passages and comments in the text that contain the specific positions concerned.

The exceptions laid down in Article 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. In your request, you do not put forward any arguments demonstrating the existence of an overriding public interest in disclosure. Similarly, we have not identified any public interest that would override the interests protected by Article 4(3) of Regulation 1049/2001. On the contrary, we consider that the protection of the decision-making process prevails over any possible private or public interest in this case.

In addition to the above, the documents referred to under numbers **1, 2 and 3** in the attached Annex contain certain information protected by Article 4(1)(a) of Regulation (EC) No 1049/2001. Article 4(1)(a) of Regulation (EC) No 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards, among other aspects, international relations.

According to settled case-law, *'the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation 1049/2001, combined with the fact that access must*

*be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation*⁵. In this context, the Court of Justice has acknowledged that the institutions enjoy ‘a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest’⁶.

After having carefully examined your request, I consider that full disclosure of the specific documents would undermine the protection of public interest as regards international relations. In particular, certain parts of these documents contain suggestions and comments that refer to the EU’s relations with third countries and/or international organisations and are interlinked with relevant discussions and negotiations taking place. Their disclosure would complicate or undermine the EU’s position in international negotiations and would therefore weaken its negotiating margin. Thus, full disclosure of the specific documents has to be refused on that basis.

However, the possibility of granting partial access to the documents concerned, in accordance with Article 4(6) of Regulation (EC) No 1049/2001, has been examined as well. Consequently, the documents may still be disclosed after redacting the relevant parts of the text that contain the specific suggestions and comments concerned.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review its position on the matters already mentioned. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

e-signed
Florika FINK- HOOIJER

⁵ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35.

⁶ Judgment in *Council v Sophie in 't Veld*, C-350/12P, EU:C:2014:2039, paragraph 63.