



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate C - Transparency, Efficiency & Resources
The Director

Brussels,
SG.C/MIA-SL

Professor Alberto Alemanno
Professor Laurent Pech
The Good Lobby
Rue d'Arlon 53,
1040 Bruxelles
Belgium

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**Subject: Your application for access to documents in accordance with
Regulation 1049/2001– Ref. GestDem 2020/5079**

Dear Professors Alemanno and Pech,

I refer to your e-mail dated 7 September 2020, registered on 9 September 2020 under the reference [Ares(2020)4637923]. In your e-mail you refer '*...to former European Commissioner Günther Oettinger who is reported to have been appointed as co-chairman of the newly created National Science Policy Council of Hungary and which advises the Hungarian government on innovation and research.*'

In your application, you request access to "*... [a]ll relevant documents held by the Commission in relation to his appointment in light of the Code of Conduct for Members of the Commission (notably Art. 11),...*

- 1. notification by Günther Oettinger of his appointment at the National Science Policy Council of Hungary to the EU Commission;*
- 2. response by the President of the EU Commission and/or College and/or Secretariat General and/or other Commission's services to Mr Günther Oettinger to the notification.*

Regardless of whether such a notification occurred, you request [we're requesting]:

- 3. any other document, exchange, contact between the President of the EU Commission and Mr. Günther Oettinger since 1 December 2019.*

4. decision by the President of the EU Commission regarding Mr. Günther Oettinger's compliance with the Code of Conduct of Members, including:

4.1 documents referring to the possibility of investing the independent ethical committee with a request under Article 12.1 of the Code and

4.2 the actual referral to such a committee.

5. Any other document, exchange, correspondence and/or note regarding Former European Commissioner Günther Oettinger's appointment to Hungary's Science Policy Council.'

I can confirm in this regard that the Commission has received a notification of a possible activity for the National Science Policy Council of Hungary since this information has already been commented on by the former Commissioner in public himself. The procedure in relation to this notification is on-going.

The Commission's decision concerning the request for authorisation of a post-mandate activity introduced by former Commissioner Oettinger has not yet been adopted. Therefore, following the examination of your request, I must inform you that no access can be granted to these documents.

The documents notifying a possible activity for the National Science Policy Council of Hungary are covered by the exception foreseen in Article 4(3), first subparagraph, (protection of the decision-making process) of Regulation 1049/2001. This provision states that '*...[a]ccess to a document drawn up by an institution for internal use or received by an institution which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure*'.

From the above-mentioned description of the context, it is obvious that the decision-making process is ongoing. Disclosure of these documents would lead to external interferences with the ongoing internal discussions and the right of the Commission to protect its "space to think". External pressure would be detrimental to the decision-making process of the Commission in this matter.

Moreover, access to certain parts of the documents have also to be refused as they are covered by the exception foreseen in Article 4(1) letter b) (protection of privacy and personal data) of Regulation No 1049/2001.

The information provided to the Commission under the above-mentioned procedure is directly related to the ethical obligations of the former Commissioner and to his responsibility to avoid any risk of conflict of interest when intending to engage in post-office activities. They also contain personal data of other third parties.

This information qualifies as personal data covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001. Disclosing this information would reveal personal data and undermine the privacy of the individuals concerned.

In accordance with the Court of Justice's judgment in the Bavarian Lager case, when a request is made for access to documents containing personal data, Regulation to

[Regulation 2018/1725](#)¹ (hereinafter the 'Data Protection Regulation') becomes fully applicable.

The documents requested contain elements, which undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) No 2018/1725, as they reveal information about identified or identifiable persons.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced.

I consider that in the present case the necessity of disclosing the aforementioned personal data to you, has not been established, in your request.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, 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.

I have also examined the possibility of granting you a partial access to the above-mentioned documents. However, at this stage, even their partial disclosure will seriously undermine the internal decision-making process and interfere with the autonomy of the Commission in taking a decision in this matter.

The exception laid down in Article 4(3), first subparagraph of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure.

Such an interest, firstly, has to be public and, secondly, has to outweigh the damage caused by the release, i.e. it must outweigh the interest protected by virtue of Article 4(3), first subparagraph of Regulation 1049/2001. I note that you do not mention any particular public interest in disclosure at this stage. For its part, the Commission does not find, at this point in time, that there is a public interest in disclosing the requested documents that would outweigh the risk of undermining the protection of the Commission's decision-making process.

Finally, I would like to assure you that, in accordance with Article 11(7) of the Code of Conduct for the Members of the Commission adopted on 31 January 2018², all Commission decisions on post term of office activities and the related opinions of the Independent Ethical Committee will be made public on a website dedicated to the ethical rules for the Members of the Commission³, with due consideration to the protection of personal data, as set out in Article 11(7) of the Code.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

¹ Regulation (EU) No 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 (repealing Regulation (EC) No 45/2001), Official Journal L 295, 21.11.2018, p. 39–98.

² [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018D0221\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018D0221(02))

³ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/codes-conduct/ethics-and-integrity-eu-commissioners_en

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission
Secretariat-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 sincerely,

Tatjana VERRIER

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