



EUROPEAN COMMISSION

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2019/2199 & 2019/2207**

Dear [REDACTED], dear [REDACTED],

I refer to your letter of 29 May 2019, registered on 4 June 2019, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter ‘Regulation (EC) No 1049/2001’).

1. SCOPE OF YOUR REQUEST

In your initial application of 3 April 2019, addressed to the Directorate-General for Environment, you requested access to the following documents:

- ‘1) The reply (answer) provided by the Italian Republic to the Commission, from the date 13 January 2017,
- 2) The (answer) provided by the Italian Republic to the Commission, from the date 12 April 2017,
- 3) The final opinion of Commission before bringing an action to the Court of Justice (before the submission of an action on 17 August 2017),

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

- 4) Any other related document containing the reasons of the Commission's statement that six landfill sites had been brought into line with Directive 1999/31.'

In relation to points 1) and 2), The European Commission has identified the following documents as falling under the scope of your request:

- The reply provided by the Italian Republic to the Commission, date 13 January 2017, reference: INF(2017)113231 (hereafter: 'document 1'); and
- The reply provided by the Italian Republic to the Commission, date 12 April 2017 reference INF(2017)114017 (hereafter: 'document 2', document 1 and document 2 hereafter together 'requested documents').

Concerning point 3), the European Commission had identified and provided access to the document described therein. No existing documents have been identified under point 4).

In its initial reply of 13 May 2019, Directorate-General for Environment, following a consultation with the concerned Member State on the basis of Articles 4(4) and 4(5) Regulation (EC) No 1049/2001, refused access to the requested documents based on the exceptions of the second indent of Article 4(2) (protection of court proceedings and legal advice) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position in respect of the requested documents. The scope of the present confirmatory decision is therefore limited to the examination to the access of documents described in points 1) and 2) above. You support your request with detailed arguments, which I will address to the extent necessary in the corresponding sections below.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I can inform you that partial access is granted to the requested documents. The redacted parts are only personal data and the partial refusal is based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001 for the reasons set out below.

2.1. Consultation of the Member State

As the requested documents originated from the Italian authorities, the European Commission, in the framework of the fresh review of the initial reply, consulted again the Italian authorities under Article 4(4) and (5) of Regulation (EC) No 1049/2001 with a view to assessing whether the exception in the second indent of Article 4(2) of Regulation (EC) No 1049/2001 is applicable. In line with the arguments put forward by the European Commission, the Italian authorities did not maintain their opinion that access to the requested documents should be rejected based on the second indent of

Article 4(2) (protection of court proceedings and legal advice) of Regulation (EC) No 1049/2001; however, the disclosure of the requested documents should occur subject to the redaction of personal data, in accordance with Article 4(1)(b) of Regulation (EC) No 1049/2001.

2.2. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data'.

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, 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 data⁴ (hereafter 'Regulation (EC) No 45/2001') becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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/EC⁵ (hereafter 'Regulation (EU) 2018/1725').

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 'requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation'.⁶

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'.⁶

³ Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as '*European Commission v The Bavarian Lager* judgment') C-28/08 P, EU:C:2010:378, paragraph 59.

⁴ Official Journal L 8 of 12.1.2001, page 1.

⁵ Official Journal L 205 of 21.11.2018, p. 39.

⁶ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.⁷

The requested documents contain personal data such as the names and email addresses of persons who are officials of the Italian national authorities. Moreover, they contain handwritten signatures.

The names⁸ of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 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 (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.⁹ This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 confirmatory application, 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 subjects’ legitimate interests might be prejudiced.

⁷ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁸ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

⁹ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the disclosure of the personal data reflected in the requested 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.

As to the handwritten signatures appearing in the requested documents, which constitute biometric data, there is a risk that their disclosure would prejudice the legitimate interest of the person concerned.

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 the disclosure of the personal data concerned.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that Article 4(1)(b) of Regulation (EC) No 1049/2001 do not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have decided to grant partial access to the requested documents.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the Commission



Enclosures: 2