



## EUROPEAN COMMISSION

LEGAL SERVICE  
The Director-General

Brussels, 25 March 2022

**By email**

Mr Fred Logue  
8/10 Coke Lane  
Smithfield  
Dublin 7  
Ireland

[ask+request-10721-7fe24abb@asktheeu.org](mailto:ask+request-10721-7fe24abb@asktheeu.org)  
[ask+request-10755-a2a699f3@asktheeu.org](mailto:ask+request-10755-a2a699f3@asktheeu.org)

**Subject: Request for access to documents**

Ref.: Your requests received on 14 February 2022, under reference GestDem 2022/0903 and on 22 January 2022 (registered on 24 January 2022), under reference GestDem 2022/1144.

Dear Mr Logue,

I refer to your above-mentioned applications for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup> by which you request the written observations submitted by Ireland in the following cases:

- C-210/06, *CARTESIO Oktató és Szolgáltató bt*<sup>2</sup>;
- C-300/20, *Bund Naturschutz in Bayern eV v Landkreis Rosenheim*<sup>3</sup>.

### **1. WRITTEN OBSERVATIONS SUBMITTED BY IRELAND**

In accordance with Article 4(4) of Regulation (EC) No 1049/2001, the Commission has consulted Ireland on its written observations. Following these consultations, I would like to inform you that it has:

- agreed to the disclosure of the written submissions in Case C-210/06. Please note however that some personal data has been deleted, as will be explained below;
- agreed to the full disclosure of the written submissions in Case C-300/20.

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<sup>1</sup> OJ L 145, 31.05.2001, page 43.

<sup>2</sup> Judgment of the Court of Justice of 16 December 2008, ECLI:EU:C:2008:723

<sup>3</sup> Judgment of the Court of Justice of 22 February 2022, ECLI:EU:C:2022:102.

Accordingly, please find enclosed a copy of the English original of the document concerning Case C-210/06, expunged of personal data, as well as a copy of the English original of the document concerning Case C-300/20.

The disclosed documents were transmitted by the Court of Justice to the Commission in its capacity as participant to the Court proceedings at stake. Access is granted for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

## **2. PROTECTION OF PERSONAL DATA**

As stated in point 1, some personal data has been redacted in the document concerning Case C-210/06, since covered by the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001, in accordance with the European Union legislation regarding the protection of personal data.

The redacted information consists of:

- the name and handwritten signature of the Court's official (page 1);
- the handwritten signatures of the agents acting on behalf of the Irish Government (page 26).

Article 4(1)(b) of Regulation (EC) No 1049/2001 states by way of exception that "*the 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*".

As the Court of Justice has ruled in its judgment in Case C-28/08P (*Bavarian Lager*)<sup>4</sup>, when a request is made for access to documents containing personal data, the Data Protection Regulation, i.e. Regulation (EU) No 2018/1725,<sup>5</sup> becomes fully applicable.

Article 3(1) of Regulation (EU) 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 by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data<sup>6</sup>.

As regards the personal data of the officials of the institutions, the General Court has confirmed in its judgment in Case T-39/17 that the information such as names, signatures, functions, telephone numbers and other information pertaining to staff members of an institution fall within

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<sup>4</sup> Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd*, ECLI:EU:C:2010:378, paragraphs 59 and 63. 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 (EC) 2018/1725.

<sup>5</sup> 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 (OJ L 205 of 21.11.2018, page 39).

<sup>6</sup> Judgment of the Court of Justice of 20 December 2017, *Peter Nowak v Data Protection Commissioner*, C-434/16, ECLI:EU:C:2017:994, paragraphs 33-35.

the notion of "*private life*", regardless of whether this data is registered in the context of a professional activity or not. Therefore, the name and handwritten signature of the Court's official must be protected, since this information constitutes personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725<sup>7</sup>.

Furthermore, in its judgment in Joined Cases C-465/00, C-138/01 and C-139/01 the Court has confirmed that "*there is no reason of principle to justify excluding activities of a professional nature [...] from the notion of private life*"<sup>8</sup>. On this basis, the above-mentioned handwritten signatures of the agents representing the Irish Government have been deleted, since they 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.

According to Article 9(1)(b) of Regulation (EU) 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.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subject 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 handwritten signatures of the Republic of Ireland's agents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and

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<sup>7</sup> Judgment of General Court of 19 September 2018, Case T-39/17, *Chambre de commerce and d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

<sup>8</sup> Judgment of the Court of Justice of 20 May 2003, Joined Cases C-465/00, C-138/01 and C-139/01, *Rechnungshof and Others v Österreichischer Rundfunk*, ECLI:EU:C:2003:294, paragraph 73.

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.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

### **3. MEANS OF REDRESS**

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below:

European Commission

Secretariat-General

Transparency, Document Management & Access to Documents (SG.C.1)

BERL7/076

B-1049 Bruxelles

Or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

*[signed electronically]*  
Daniel CALLEJA CRESPO

Attachments: 2