



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels, 27.06.2014
SG.B.4/BdC/rc - sg.dsg2.b.4(2014) 2244960

Mr Kenneth Haar
AskTheEU

**By e-mail only: ask+request-1208-
32a5e9d3@asktheeu.org**

**Decision of the Secretary General pursuant to Article 4 of the Implementing Rules to
Regulation (EC) N° 1049/2001¹**

**Subject: Confirmatory application for access to documents under Regulation
1049/2001 - Gestdem 2013/991**

Dear Mr Haar,

I refer to your email of 24 April 2014, registered on 25 May 2014, by which you request, pursuant to Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents², a review of the lack of position taken in reply to your initial application of 21 February 2014.

Through your initial application, you requested access to *communication between Commission President Barroso and his cabinet and the German Federal Government, the French Government and the European Roundtable of Industrialists concerning a specific meeting on 19 February this year in Paris.*

The Commission services have identified the following three documents as falling under the scope of your request:

- Exchange of e-mails between the concerned parties on 31 January (with an annex) and 4 February 2014 ("document 1");
- Exchange of e-mails between the concerned parties on 13 and 14 February 2014 ("document 2");
- Exchange of e-mails between the concerned parties on 14 and 15 February 2014.

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

² Official Journal L145 of 31.05.2001, p.43.

Access to all three documents is herewith granted, as none of the exceptions of Article 4 of Regulation 1049/2001 is applicable to these documents, with the exception of the names and functions of officials of the French Presidency and the German Federal Chancellery, as well as those of members of the Security Services, which have been redacted for the reasons set out below. Please find redacted copies of the documents attached to this letter.

1. PROTECTION OF THE PRIVACY AND INTEGRITY OF THE INDIVIDUAL

The names and functions of officials of the French Presidency and the German Federal Chancellery, as well as those of members of the Security Services were redacted from the documents based on the exception of Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and the integrity of the individual), for the reasons set out below.

Article 4(1)(b) of Regulation 1049/2001 provides that access to documents is refused where disclosure would undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

Article 2(a) of Data Protection Regulation 45/2001 ("the Data Protection Regulation") provides that "personal data" shall mean any information relating to an identified or identifiable person [...]. 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".

The names and functions of officials of the French Presidency and the German Federal Chancellery, as well as those of members of the Security Services, undoubtedly constitute personal data in the meaning of Article 2(a) of Data Protection Regulation 45/2001. In its judgment in the *Bavarian Lager* case³, the Court of Justice ruled that, when a request is made for access to documents containing personal data, the Data Protection Regulation, and in particular its Article 8(b), becomes fully applicable.

According to Article 8(b) of the Data Protection Regulation, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative.

However, I note that you have not put forward any specific interest in, nor demonstrated any necessity for, obtaining access to these personal data. Therefore, access to these personal data shall be denied pursuant to Article 4(1)(b) of Regulation 1049/2001. The access granted is therefore partial access in the meaning of Article 4(6) of Regulation 1049/2001.

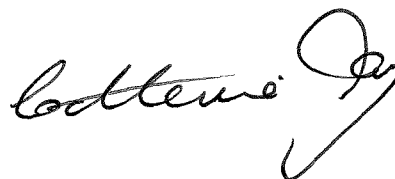
³ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

I would like to point out that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

2. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Catherine Day', with a large, stylized flourish at the end.

Catherine Day

Cc: - redacted copies of the documents 1-3, to which you request access