



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B

Brussels, **23 DEC. 2014**
SG/B.3/MIA-DCB

Ms Vicky Cann
CEO
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By e-mail:
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8000937a@asktheeu.org

**Subject: Your application for access to documents in accordance with
Regulation 1049/2001– Ref. GestDem 2014/5017**

Dear Ms Cann,

We refer to your e-mail dated 27 October 2014 and registered on the same date under the above-mentioned reference number.

In your e-mail, you request "...[F]urther to the requests of 13/08/14 ref GestDem 2014/3710 and 24/8/14 ref GestDem 2014/4272 and under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting copies of all applications and any accompanying materials made by EU commissioners which seek Commission authorisation for new professional activities under the commissioner code of conduct. I would further like to request any emails, correspondence and meeting notes which relate to these applications; all opinions from the ad hoc ethical committee on each case; and copies of the Commission's final decision in each case".

I have identified 60 documents falling within the scope of your request.

You will find a detailed list enclosed. The documents regarding each former Commissioner are listed together. I will like to recall that this request overlaps with the scope of your request for access to documents Gestdem° 2014/5422 concerning the documents related to Mr Barroso post-mandate activities (documents n° 23 to 35). The reply was sent on 15 December 2014 [Ref. Ares(2014) 4214249].

As regards the documents related to the decisions on post-mandate activities taken in the 2110th meeting of the Commission of 16 December 2014, please note that the minutes do not exist yet. Therefore, the documents in question have not been included in this reply.

Finally, I would like to call your attention to the fact that documents called "templates", which include the information in the Commission's possession concerning the related post-mandate activities, were attached to the notes to the Ad Hoc Ethical Committee (see documents n° 37, 45, 53 and n° 54). The information contained in these documents can be found in the opinions of the Committee, in the Commission's decisions as well as in the notifications of the former Commissioners. Consequently, I assume that their contents are of no interest to you. If you do not share this view, please let us know.

1. PUBLIC DOCUMENTS

- Documents n° 8, 13, 21, 40, 48 and n° 58 contain the extract of the minutes of the Commission meetings in which the decisions on Ms Reding's, Mr Nelli-Feroci, Mr Semeta's, Mr Pielbags's and Mr Potocnik's post-mandate activities, were adopted. Please note that they are already available to the public and therefore, copies are not enclosed.
- Documents n° 6, 7, 19, 20, 38, 39, 46, 47 and the attachments to documents n° 9, 10, 22, 41, 42, 49 and 50, have been disclosed in the framework of other access to documents requests. Consequently, these documents are in the public domain.

2. CONCLUSIONS ON THE REMAINING DOCUMENTS UNDER REGULATION 1049/2001

2.1. Full access

Following the examination of your request and of the remaining documents in the list, I am pleased to grant you access to:

- the entirety of documents n° 3, 12, 46, 55, 56 and n° 57;
- the cover notes and cover letters to documents n° 2, 9, 10, 14, 15, 18, 22, 37, 42, 50, 53, 54 and n° 60. Please note that in some cases the cover notes are identical as they contain information on decisions concerning several Commissioners.

You will find copies enclosed.

2.2. Extension of delay

As regards the following documents n° 1, 4, 5, 11, 16, 17, 36, 43, 51 and n° 52, we will not be in a position to complete the examination of your application within the time limit of 15 working days, which expires on 5 January 2014. These documents are the letters of the former Commissioners to the Commission.

The extension of delay concerns partially documents n° 2, 18, 37, 45, 53 and n° 54. The attachments to these documents are the letters of the former Commissioners and consequently, their disclosure is linked to the reply that will be given by the authors of the documents.

This extended time limit is needed as the documents in question originate from third parties, which will be consulted.

Therefore, we have to extend the time limit with 15 working days in accordance with Article 7(3) of Regulation (EC) No 1049/2001 regarding public access to documents. The new time limit expires on 26 January 2015.

Please note that, I have taken into account the date of ALTER-EU reply of 3 December 2014 [Ref: Ares(2014)3925589] refusing our friendly solution proposal, for the calculation of this new deadline.

However, I will do my best to provide you with a complementary reply on these documents as soon as the position of the authors of the documents is addressed to the Commission.

2.3. Additional documents

In addition, I must inform you that the Commission is currently examining other notifications related to envisaged post-office activities of former Commissioners. In some cases, the opinion of the Ad Hoc Ethical Committee has been requested namely, when there is a potential link with the Commissioner former portfolio. The Commission has not yet adopted a final decision on these notifications and the decision-making process is ongoing. At this stage, I must inform you that no access can be granted to these documents for the reasons set out below.

2.3.1. Protection of the decision-making process

The notifications and related documents 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*".

Disclosure of these documents, would lead to external interferences with the ongoing decision-making process. External pressure would be detrimental to the right of the Commission to protect its "space to think" in this matter.

2.3.2. Protection of privacy and the integrity of the individual

Additionally, parts of the notifications and related documents contain information on the post-mandate activities communicated to the College on the basis of the Code of Conduct for Commissioners, including third parties data.

Disclosing the information provided by the former Commissioners in this context, would reveal personal data and information exchanged in confidence, in the framework of the authorisation request. Therefore, disclosing at this stage the information provided may undermine the privacy of the concerned Commissioners and third parties. This is *à fortiori* the case if the notifications are withdrawn or if the Commission takes a negative decision on the envisaged activities.

Please bear in mind that it is not possible to grant a partial access to these documents. Indeed, in the event that the above-mentioned parts were to be disclosed, third parties with some knowledge of the facts and events could easily identify the Commissioners and the entities concerned.

In its judgment in the *Bavarian Lager* case¹, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001² (hereinafter the 'Data Protection Regulation') becomes fully applicable.

Article 2(a) of 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*)³, there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life."

The concerned documents contains elements on the envisaged professional activities which undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about an identified or an identifiable person. According to Article 8(b) of the Data Protection Regulation, which is fully applicable in this case, 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.⁴ Those two conditions are cumulative.⁵ 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, access to personal data contained in relevant parts of the above-mentioned documents has to be refused on the basis of the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

Please note that the above-mentioned considerations apply equally to the deleted parts of documents n° 41, 49 and 59, namely the letters of the Secretary-general to the former Commissioners concerned informing them on the decisions taken by the Commission regarding their notifications or requesting complementary information. These documents contain the address and/or the e-mail of the former Commissioners and for obvious reasons this personal data is covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

¹ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

² 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, Official Journal L 8 of 12.1.2001

³ Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

⁴ Cf. Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

⁵ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *Commission v Bavarian Lager*, paragraphs 56, 63, 68, 76-79.

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.

The Commission does not find, at this point in time, that there is a public interest in disclosing the documents that would outweigh the risk of undermining the protection of the Commission's decision-making process.

If you wish to appeal against this decision, you should write to the Commission Secretary-General at the address sg-acc-doc@ec.europa.eu. You have fifteen working days from receipt of this letter in which to appeal.

P.

Marianne Klingbeil
Director SG B f.f.

Delany & B. J. J.

Annexes

Cc: SG-DOSSIERS-ACCES@ec.europa.eu