



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate B

Brussels, **15 DEC. 2014**  
SG/B.3/MIA-DCB

Ms Vicky Cann  
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**This reply replaces in its entirety the reply sent on 2 December 2014**  
**[Ref.Ares(2014)4035177]**

**Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2014/5422**

Dear Ms Cann,

We refer to your e-mails dated 13 November 2014 and registered on the same date under the above-mentioned reference number. We also refer to our initial reply sent on 2 December 2014 containing an error in the annexed documents. You have kindly accepted to delete this reply and its annexes. Since then, the Commission adopted a decision on 3 December 2014 regarding several post-mandate envisaged activities of Mr Barroso. Therefore, the documents related to this decision are now included within the scope of your request.

In your e-mail, you request access to *"copies of all applications and accompanying materials made by President Barroso for new professional activities as authorised by the Commission in its meeting on 5 November 2014, and any other applications for authorisation which he has made for new professional activities under the commissioner code of conduct [...] any emails, correspondence and meeting notes which relate to these applications; all opinions from the ad hoc ethical committee on each case; and Commission decision C(2014) 8319."*

I have identified 13 documents falling within the scope of your request.

1. Letter of President Barroso to Ms Day of 09.10.2014 [Ref. Ares(2014) 3357734];
2. Letter of President Barroso to Ms Day of 09.10.2014 [Ref. Ares(2014)3358803];
3. Note to the Members of the Ad-Hoc Ethical Committee and annex [Ref.

- Ares(2014) 3441671];
4. Avis du Comité Ethique ad Hoc du 27.10.2014 [Ref. Ares(2014)3559522];
  5. Communication de M. le Président [Communication C(2014) 8319 of 03.11.2014];
  6. Commission minutes PV (2014) 2104 final Decision of 5 November 2014;
  7. Letter to former President Barroso informing him of the Commission decision [Ref. Ares(2014)3687866];
  8. Note to the Members of the Ad-Hoc Ethical Committee on the Commission decision on former President Barroso's envisaged post-office activities [Ref. Ares(2014)3688436];
  9. Letter of 26 November 2014 to President Juncker [Ref. Ares(2014)3951511];
  10. Commission minutes PV (2014) 2108 final Decision of 3 December 2014
  11. Communication de M. le Président [Communication C(2014) 9296 of 02.12.2014];
  12. Letter to former President Barroso informing him of the Commission decision [Ref. (Ares(2014)4045775]
  13. Note to the Members of the Ad-Hoc Ethical Committee on the Commission decision on former President Barroso's envisaged post-office activities [Ref. Ares(2014)4052322];

You will find a detailed list enclosed.

## **1. PUBLIC DOCUMENTS**

As regards documents n° 6 and n° 10, namely, the extract of the minutes of the Commission meeting of 5 November 2014, [PV(2014) 2104 final] and of 3 December 2014 [PV (2014) 2108 final] corresponding to the decisions on Mr Barroso's post-mandate activities, please note that they are already available to the public. As regards document n° 5 (Commission decision C(2014) 8319), this document has been recently disclosed and is in the public domain.

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

### **2.1. Full access**

Following examination of your request and of the remaining documents in the list, I am pleased to provide you with full access to documents n° 3, 4, 7, 8, 11 and 13. You will find copies enclosed.

### **2.2. Extension of delay**

As regards documents n° 1, 2 and n° 9, an extended time limit is needed as the documents in question originate from a third party, which has been consulted.

Therefore, we have to extend the time limit by 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 5 January 2015. However, I will do my best to provide you

with a complementary reply on these three documents as soon as the position of the author of the documents is addressed to the Commission.

### **2.3. Additional documents**

In addition, I must inform you that the letter listed under document n° 9 above contains also the notification regarding several post-mandate activities of Mr Barroso on which the Commission has not yet adopted a final decision. The decision-making process is ongoing. At this stage, I must inform you that no access can be granted to this letter and any other related documents falling within the scope of your request for the reasons set out below.

#### *2.3.1. Protection of the decision-making process*

The notification 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 this document 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 notification 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 President in this context, would reveal personal data and information exchanged in confidence, in the framework of the treatment of a specific file. Therefore, disclosing at this stage the information provided may undermine the privacy of the concerned Commissioner 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 Commissioner and the entity concerned.

In its judgment in the *Bavarian Lager* case<sup>1</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001<sup>2</sup> (hereinafter the 'Data Protection Regulation') becomes fully applicable.

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

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*)<sup>3</sup>, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life."*

The concerned documents contain 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.<sup>4</sup> Those two conditions are cumulative.<sup>5</sup>

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° 7 and n° 12, namely the letters of the Secretary-general to Mr Barroso informing him on the decisions taken by the Commission regarding his notifications. These documents contain the address and the e-mail of the former President and for obvious reasons this personal data is covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

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.

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<sup>2</sup> 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

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

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](mailto:sg-acc-doc@ec.europa.eu). You have fifteen working days from receipt of this letter in which to appeal.



Marianne Klingbeil  
Director SG B f.f.

Annexes

Cc: [SG-DOSSIERS-ACCES@ec.europa.eu](mailto:SG-DOSSIERS-ACCES@ec.europa.eu)