



EUROPEAN COMMISSION

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**Ms Vicky CANN**  
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**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT  
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2016/5541**

Dear Ms Cann,

I refer to your message registered on 18 November 2016 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 documents<sup>2</sup> ('Regulation 1049/2001').

**1. SCOPE OF YOUR REQUEST**

In your initial application of 5 October 2016, dealt with by Directorate B of the Commission's Secretariat General ('Directorate B'), you requested access to the *copies of the 2014 application by former Commissioner Connie Hedegaard which sought Commission authorisation for new professional activities with Danfoss under the Commissioners' Code of Conduct*. You explained in your initial application that your requests encompasses also *emails, correspondence and meeting notes which relate to this application and all opinions from the ad hoc Ethical Committee*.

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

In the initial reply of 15 November 2016, Directorate B referred to the information publically available on the Commission's Transparency website<sup>3</sup>. This website contains all the relevant information regarding the post-mandate activities taken up by former Commissioners during the 18-month period following the end of their term of office which were authorised (accepted) by the Commission in line with the Code of Conduct for Commissioners<sup>4</sup>.

Directorate B also informed you that the Commission may not provide any information going beyond what is available on the above-mentioned website. This included any confirmation or denial that Ms Hedegaard (or any other former Commissioner) submitted to the Commission in 2014 applications for authorisation of post-mandate activities, other than those published on the website.

Through your confirmatory application you request a review of this position.

Following your confirmatory application, the Commission carried out a new search for documents possibly falling under the scope of your request and identified the following:

1. E-mail of Ms Hedegaard to Ms Day of 11 November 2014, ref.: Ares(2014)3749987,
2. Note of Ms Day to Ms Hedegaard of 21 November 2014, ref. Ares(2014)3890470,
3. Letter of Ms Hedegaard to Ms Day of 26 November 2014, ref.: Ares(2014)3961852,
4. Note of Ms Day to the Ad Hoc Ethical Committee of 02.12.2014 [Ref. Ares(2014)4025675],
5. Note of the Ad Hoc Ethical Committee of 5 December 2014, ref.: Ares(2014)4084497,
6. Letter of Ms Day to Ms Hedegaard of 11 December 2014, ref. Ares(2014)4162493,
7. LS Consultation dated 12 December 2014, ref.: Ares (2014)4126365,
8. Commission Decision C(2014) 9879 of 5 December 2014,
9. Letter of 16 December 2014, ref.: Ares(2014)4235347,
10. E-mail of Ms Hedegaard to Ms Day of 22 February 2015, ref.: Ares(2015)750263,
11. Note of Ms Day to the Ad Hoc Ethical Committee of 24 February 2015, ref.: Ares (2015)779876,
12. Note of the Ad Hoc Ethical Committee of 26 February 2015, ref.: Ares(2015)820545,
13. E-mail of Ms Day to Ms Hedegaard of 2 March 2015, ref.: Ares(2015) 901165,

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<sup>3</sup> [http://ec.europa.eu/transparency/ethics-for-commissioners/decisions\\_en.htm](http://ec.europa.eu/transparency/ethics-for-commissioners/decisions_en.htm).

<sup>4</sup> C(2011)2904.

14. E-mail of Ms Hedegaard to Ms Day of 5 March 2015, ref. Ares(2015) 901165.

I note that the above-mentioned documents were already identified as falling under the scope of two earlier requests introduced by you<sup>5</sup>, the scope of which was similar.

In response to these requests, partial access was granted to documents (1) – (9), with the relevant parts redacted on the basis of the exceptions provided for in Article 4(1)(b) and Article 4(2), first indent of Regulation 1049/2001. With regard to documents (10) – (14), access was refused to the entirety of the documents, based on the same exceptions.

In the light of the above, the scope of your current request 2016/5541 is the same as that of requests 2015/337 and 2015/3703.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following my review, I am pleased to inform you that:

- full access is granted to document (4),
- wider partial access is granted to documents (1), (2), (3), (5), (8) and partial access is granted to documents (13) and (14),
- the initial refusal of access is confirmed as regards the undisclosed parts of documents (6), (7)<sup>6</sup>, (9) and documents (10), (11) and (12).

The undisclosed (parts of the) documents fall under the exception provided for in Article 4(1)(b) of Regulation 1049/2001.

The detailed reasons are set out below.

### **2.1 Protection of the privacy and the integrity of the individual**

Article 4(1)(b) of Regulation 1049/2001 provides 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.*

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<sup>5</sup> Gestdem 2015/337 and 2015/3703.

<sup>6</sup> This document is composed of the email message and the attachment which is the same as (partially disclosed) document (8).

In your confirmatory application, you refer to the information allegedly included in a press article<sup>7</sup>, according to which *Ms Hedegaard has already confirmed publicly that she had previously applied to the Commission to join Danfoss during the 18 month notification period and later withdrew the request (...).*

You also argue that *[t]he ad hoc ethical committee apparently indicated that in its view, [taking the function with Danfoss], if undertaken during the 18 months, would not be compatible with the Code of Conduct for Commissioners and TFEU 245. Consequently, there is a significant public interest in knowing why such a role was deemed incompatible with the Code of Conduct (...). You conclude the reasoning with the reference to other recent revolving doors cases involving members of the Barroso II Commission [which] have created significant political and public concern, and transparency is an important component in an effective approach to revolving doors and potential conflicts of interest.*

Through the above-mentioned reasoning, you seem to allege that allowing the public (including yourself) to carry out the scrutiny of the authorisation process for Commissioners' post-mandate activities warrants the public disclosure of the documents requested.

In this respect, I note that in your confirmatory application registered under *Gestdem* number 2015/3703, you relied on a very similar reasoning: *without transparency on these matters [i.e. information relating to Commission actions and deliberations in the context of the assessment of request for authorization of the post-mandate activities] it is impossible for third parties to conduct a full assessment of whether the Code of Conduct for Commissioners is being effectively and consistently applied and implemented.* The Commission took a position regarding this reasoning in the above-mentioned confirmatory decision 2015/3703, of which I confirm the validity.

With regard to your argument that certain information relating to Ms Hedegaard's request for Commission authorisation of her assignment with Danfoss is already available in the public domain, I would like to clarify that the information included in the undisclosed parts of documents (1) - (3), (5) - (9), (13) – (14) and undisclosed documents (10) – (12) goes beyond the information released to the public in the press article referred to in your current confirmatory application.

Consequently, as regards the non-disclosed parts of documents (1) - (3), (5) - (9), (13)- (14) and undisclosed documents (10) – (12), identified as covered by your earlier request 2015/3703, I confirm that I have not been able to identify any relevant new circumstances justifying a different position than the one taken in the confirmatory decision on your above-mentioned earlier request, which had the same scope.

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<sup>7</sup> <https://euobserver.com/institutional/135306>.

Accordingly, refusal of access to the withheld parts of (1) - (3), (5) - (9), (13) – (14) and undisclosed documents (10) – (12) has to be confirmed, based on the reasoning set out in that earlier confirmatory decision, of which a copy is annexed.

### **3. PARTIAL ACCESS**

I have also examined the possibility of granting partial access to documents (10) – (12) in accordance with Article 4(6) of Regulation 1049/2001. However, partial access is not possible, given that the documents concerned are covered in their entirety by the exception provided for in Article 4(1)(b) of Regulation 1049/2001.

### **4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exception laid down in Article 4(1)(b) of Regulation 1049/2001 is absolute exception, i.e. its applicability does not need to be balanced against overriding public interest in disclosure.

### **5. MEANS OF REDRESS**

I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the 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  
Alexander ITALIANER  
Secretary-General*

1) Document (4) and the redacted version of documents (1), (2), (3), (5), (8), (13) and (14),

2) Your earlier confirmatory decision 2015/3703.