



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Policy Coordination I
The Director

Brussels, 19 DEC. 2016
SG.D1/TMC/NAE

Mr Jesús ESCUDERO

Vía de las Dos Castillas, 33
Ática 7, Planta 1 - Oficinas E, F, G y H
E - 28224 Pozuelo de Alarcón (Madrid)

Copy by e-mail:

ask+request-3519-0d6b3c0b@asktheeu.org

Subject: Your application for access to documents pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents – ref. GestDem 2016/5992

Dear Mr Escudero,

I refer to your e-mail of 25 October 2016, registered on the same day, by which you make a request pursuant to Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹.

You request access to *all correspondence (including letters, emails, phone logs, minutes of meetings...) between the President of the European Commission Jean-Claude Juncker or his cabinet since November 1st 2014 with: Spanish Prime Minister Mariano Rajoy or his cabinet, Spanish Deputy Prime Minister Soraya Sáenz de Santamaría or her cabinet and Spanish Minister of Economy Luis de Guindos or his cabinet.*

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

1. Ares(2015)186863: letter from Mr Rajoy to Mr Juncker dated 12/01/2015
2. Ares(2015)217396: letter from Mr Juncker to Mr Rajoy dated 20/01/2015
3. Ares(2015)335134: letter from Mr Juncker to the Members of the European Council dated 27/01/2015
4. Ares(2015)922407: letter from Mr Rajoy to Mr Tusk and Mr Juncker dated 27/02/2015
5. Ares(2015)1710084: letter from Mr Rajoy to Mr Juncker dated 31/03/2015
6. Ares(2016)104100: letter from Mr Juncker to Mr Rajoy dated 21/12/2015
7. Ares(2016)1007386 & annex: letter from Mr Rajoy to Mr Juncker dated 26/02/2016
8. Ares(2016)1021757: letter from Mr Rajoy to Mr Juncker dated 29/01/2016
9. Ares(2016)1374423: letter from Mr Juncker to Mr Rajoy dated 18/03/2016
10. Ares(2016)1946540: letter from Mr Rajoy to Mr Juncker dated 06/04/2016
11. Ares(2016)2163483: letter from Mr Rajoy to Mr Juncker dated 05/05/2016
12. Ares(2016)2958570: letter from Mr Juncker to Mr Rajoy dated 27/06/2016

¹ Official Journal L145 of 31.05.2001, p.43.

13. Ares(2016)3982456: letter from Mr Rajoy to Mr Juncker dated 25/07/2016
14. Ares(2016)5585462: letter from Mr Juncker to Mr Rajoy dated 27/09/2016
15. Ares(2016)6289739: letter from Mr Rajoy to Mr Juncker dated 03/11/2016.

Having examined the documents requested under the provisions of Regulation No 1049/2001, I have decided to grant:

- Full access to document no. 14,
- Partial access to documents 1 to 6, 8 to 10 and 12 to 15,
- No access to documents 7 and 11.

Partial access to documents 1 to 6, 8 to 10 and 12 to 15 can be granted with the exception of:

- the personal data (signature) of the author of the letter;
- the personal data (email address) of a 'contact person' which is mentioned in one document and which does not occupy any senior management position.

These personal data must be protected pursuant to Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and integrity of the individual), as explained below.

Article 4(1)(b) provides that *the institutions shall refuse access to a document 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.*

In accordance with the *Bavarian Lager* ruling², when a request is made for access to documents containing personal data, Regulation 45/2001³ becomes fully applicable.

Article 2(a) of Regulation 45/2001 defines personal data as *any information relating to an identified or identifiable natural person [...]; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.*

Pursuant to settled case law, *the concept of private life' must not be interpreted restrictively and [...] there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life.*⁴

The above-mentioned signature, names and contact details clearly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

In accordance with Article 8(b) of Regulation 45/2001, personal data shall only be transferred to recipients if the necessity to disclose the personal data has been established and there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. These conditions are cumulative.

² Judgment in *Bavarian Lager*, C-28/08 P, EU:C:2010:378

³ 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.

⁴ See *inter alia*, judgment in *Österreichischer Rundfunk*, C-465/00, EU:C:2003:294, paragraph 73.

As the Court ruled in constant case law, if the applicant does not provide any express and legitimate justification in order to demonstrate the necessity for the personal data to be transferred, the Commission cannot weigh up the interests, and the request must therefore be refused⁵.

In the present case, I note that you have not put forward any arguments to substantiate a need to obtain the above-mentioned personal data or any specific interest in obtaining these data. Furthermore, it cannot be assumed that the legitimate interests of the individuals concerned would not be prejudiced by the disclosure.

Therefore, in accordance with Article 4(1)(b) of Regulation 1049/2001, access to the personal data contained in the documents requested has to be refused, as the need for public disclosure has not been substantiated, and it cannot be assumed that the disclosure would not prejudice the legitimate rights of the individuals concerned.

Please note also that Article 4(1)(b) of Regulation 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

Regarding documents 7 and 11, I have decided not to grant access on the grounds of Article 4(1)(a) of Regulation 1049/2001, since disclosure would undermine the financial, monetary or economic policy of the Community or a Member State, in this case Spain. This decision has been taken after consultation with the Spanish authorities. According to Article 4(5) of Regulation 1049/2001, a Member State may request the institution that has received the request for access not to disclose a document originating from that Member State without its prior agreement.

In case you would disagree with the above assessment, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to introduce a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency unit SG-B4
BERL 5/288
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu.

Yours sincerely,


Marcel Haag

Annexes (13)

⁵ Judgments in *Bavarian Lager*, EU:C:2010:378, paragraphs 77-78, *Strack*, C-127/13 P, EU:C:2014:2250, paragraphs 107 -108; and also *Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 85.