



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Modernisation of the Single Market  
Service Policy for Consumers

20. 12. 2018

Brussels,  
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***By registered letter with  
acknowledgment of receipt***

Mr Olivier Hoedeman  
Corporate Europe Observatory  
Rue d'Edimbourg 26  
B-1050 Brussels

***Advance copy by email:***

[ask+request-5964-639434fa@asktheeu.org](mailto:ask+request-5964-639434fa@asktheeu.org)

**Subject: Request for access to documents – GESTDEM No. 2018/6465**

Dear Mr Hoedeman,

Thank you for your e-mail of 3.12.2018 which was registered on 5.12.2018, requesting access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L145, 31 May 2001, page 43 and following).

### **1. SCOPE OF YOUR REQUEST**

Your e-mail requested access to documents as follows:

*"- minutes and other reports of meetings between the European Commission's DG GROW and lobbyists (and other industry representatives) in which the notification procedure for services in the internal market was discussed (including authorisation schemes and other requirements related to services and the Services Directive).*

*- all correspondence (including emails) between the European Commission's DG GROW and lobbyists (and other industry representatives) in which the notification procedure for services in the internal market was discussed (including authorisation schemes and other requirements related to services and the Services Directive).*

*The request is limited to the period between October 2014 and October 2015"*

### **2. DESCRIPTION OF DOCUMENTS IDENTIFIED**

We have identified 6 documents that match the scope of your request. The list of these documents is in the annex.

All identified documents relate to positions papers or opinions submitted to DG Internal Market, Industry, Entrepreneurship and SMEs by organisations representing business or professions.

### 3. FULL DISCLOSURE OF 6 DOCUMENTS

We would like to inform you that all identified documents are fully disclosed<sup>1</sup>.

Please note that the documents received from third parties are disclosed for information only and cannot be re-used without the agreement of the originators, who hold a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

The documents to which you have requested access contain personal data. Documents n°2 and n°4 as listed in the document register are already available in the public domain (you will find the relevant links in the document register).

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EC) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>2</sup> ('Regulation 2018/1725').

Article 3(1) of Regulation 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.<sup>3</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>4</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable<sup>5</sup>

Pursuant to Article 9(1)(b) of Regulation 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

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<sup>1</sup> Except for redaction of personal data. Please see reference below.

<sup>2</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>3</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

<sup>4</sup> Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

<sup>5</sup> Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make 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  
Secretary-General  
Unit C.1. 'Transparency, Document Management and Access to Documents'  
BERL 5/327  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Robert STRAUS  
Head of Unit

Annexes: Document register;  
Documents