



EUROPEAN COMMISSION

Secretariat-General

Directorate C - Transparency, Efficiency & Resources
The Director

Brussels,
SG.C.1/AF

By registered mail with AR

Ms Josefina Marti
Calle de Juan Bravo 62
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Subject: Your application for access to documents – GESTDEM 2019/2055

Dear Ms Marti,

I refer to your message of 2 April 2019 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number. Please accept our apologies for this late answer to your request.

1. SCOPE OF YOUR REQUEST

You are requesting access to, I quote, ‘[a] complete of list of all meetings held by any member of President's Jean-Claude Juncker team/staff (including the President) with churches, religious associations or communities (or the organisations representing them), as well as with philosophical and non-confessional organisations, from 1 January 2014 onwards, specifying the status of the organization (church, religious association or community, philosophical association or non-confessional association). All documents, including all emails, minutes, reports or other documents received or drawn up before, during or after the meetings, and any other briefing papers related to these meetings’.

The European Commission has identified the following documents as falling within the scope of your request:

- Email sent by the Head of Cabinet of the President of the European Commission of 21 February 2019, reference Ares(2019)1077663 (hereafter ‘document 1’);
- Letter sent by the Commission of the Bishops’ Conferences of the European Community (‘COMECE’) of 23 January 2019, reference Ares(2019)393573, (hereafter ‘document 2’);

- Email sent on behalf of the Deputy Head of Cabinet of the President of the European Commission of 14 November 2019, reference Ares(2018)5828318, (hereafter ‘document 3’);
- Letter and attached report sent by the Office of Tibet – Brussels of 6 September 2019, reference Ares(2018)4660954, (hereafter ‘document 4’);
- Email sent by the Cabinet of the President of the European Commission of 6 March 2018, reference Ares(2018)1258137, (hereafter ‘document 5’);
- Letter sent by COMECE of 20 March 2018, reference Ares(2018)1566317, (hereafter ‘document 6’);
- Email sent by COMECE of 19 February 2018, reference Ares(2018)951135, (hereafter ‘document 7’);
- Email sent by the Head of Cabinet of the President of the European Commission of 20 February 2017, reference Ares(2017)907734, (hereafter ‘document 8’);
- Email and letter sent by COMECE and the Conference of European Churches (‘CEC’) of 7 February 2017, reference Ares(2017)678731, (hereafter ‘document 9’);
- Email sent by the Head of Cabinet of the President of the European Commission in relation to the International Charlemagne Prize of 28 October 2016, reference Ares(2016)6169870, (hereafter ‘document 10’);
- Email sent in relation to the International Charlemagne Prize of 20 September 2016, reference Ares(2016)5454938, (hereafter ‘document 11’);
- Email sent on behalf of the Patriarch of Syria of 15 September 2016, reference Ares(2016)5362670, (hereafter ‘document 12’);
- Email sent in relation to the International Charlemagne Prize of 4 February 2016, reference Ares(2016)626893, (hereafter ‘document 13’);
- Email sent by the Cabinet of the President of the European Commission in relation to the International Charlemagne Prize of 15 March 2016, reference Ares(2016)1297514, (hereafter ‘document 14’);
- Email exchanges between the European Jewish Congress and the Cabinet of the President of the European Commission of January 2016, reference Ares(2016)188359, (hereafter ‘document 15’);
- Further email exchanges between the European Jewish Congress and the Cabinet of the President of the European Commission of January 2016, reference Ares(2016)48499, (hereafter ‘document 16’);
- Letter sent by the ‘Evangelische Kirche in Deutschland’ (‘EKD’) of 18 September 2015, reference Ares(2015)3929888, (hereafter ‘document 17’);
- Email sent by the Head of Cabinet of 26 February 2015, reference Ares(2015)832364, (hereafter ‘document 18’);
- Further email exchanges between the Cabinet of the President of the European Commission and EKD of February 2015, reference Ares(2015)452026, (hereafter ‘document 19’).

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

Following our assessment, I hereby inform you that wide partial access is granted to the requested documents, subject only to the redaction of personal data, in accordance with

Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, for the reasons set out below.

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that '[t]he 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'.

The applicable legislation in this field is Regulation (EU) 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 (hereafter 'Regulation (EU) 2018/1725').¹

In its judgment in Case C-28/08 P (*Bavarian Lager*)², 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.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 2018/1725. However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), 'there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life'.³

Please note that the documents to which you request access, contain the names, surnames and contact details of people who are not considered as public figures, nor are the main representatives of the organisations concerned. They contain the personal data of staff members of the European Commission not holding any senior management positions as well.

The names, surnames and contact details of the persons concerned as well as other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 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

¹ Official Journal L 205 of 21.11.2018, p. 39.

² Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, Case C-28/08 P, EU:C:2010:378, paragraph 59.

³ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joint Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

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 (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.⁴ This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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.

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 (EC) No 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 individual concerned would not be prejudiced by disclosure of the personal data concerned.

2.1. Assessment of the remaining parts of your request

Regarding the part of your request, relating to “[a] complete of list of all meetings held by any member of President's Jean-Claude Juncker team/staff (including the President) with churches, religious associations or communities (or the organisations representing them), as well as with philosophical and non-confessional organisations, from 1 January 2014 onwards, specifying the status of the organization (church, religious association or community, philosophical association or non-confessional association)”, we regret to inform

⁴ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

you that the European Commission does not hold such documents that would correspond to the description given in your application.

Please note however that information about the President's participation in public events and meetings is published via his public agenda, available at the following address:

https://ec.europa.eu/commission/commissioners/2014-2019/calendar_en?field_editorial_section_multiple_tid=163

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. I would like to refer in this respect to the judgment of the Court of Justice in Case C-127/13 P (*Strack v Commission*), according to which '[n]either Article 11 of Regulation 1049/2001 nor the obligation of assistance in Article 6(2) thereof, can oblige an institution to create a document for which it has been asked to grant access but which does not exist'.⁵

The above-mentioned conclusion has been confirmed in Case C-491/15 P (*Typke v Commission*), where the Court of Justice held that 'the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and [...] Regulation No 1049/2001 may not be relied upon to oblige an institution to create a document which does not exist. It follows that, [...], an application for access that would require the Commission to create a new document, even if that document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001'.⁶

Given that the European Commission does not hold any documents corresponding to the description given in your application, nor is obliged to create a document, it is not in a position to fulfil your request.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

Please note that partial access is granted to the requested documents.

5. MEANS OF REDRESS

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the

⁵ Judgment of the Court of Justice of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 46.

⁶ Judgment of the Court of Justice of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Brussels,
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Tatjana VERRIER
Director

Enclosures: (19)