



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate C - Transparency, Efficiency & Resources
The Director

Brussels, 16.09.2019
SG.C.1/AF/rc-

By registered mail with AR

Mr Maarten Hillebrandt
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Subject: Your application for access to documents – GESTDEM 2019/4706

Dear Mr Hillebrandt,

We refer to your request for access to documents, registered on 13 August 2019, under the above-mentioned reference number.

In your initial application, you requested access to all confirmatory decisions of the European Commission pertaining to trilogue negotiation files and methods. After it became clear that your request concerned a large amount of documents, the European Commission engaged in a discussion with you in order to limit the scope of your request to a more reasonable amount of documents that could be handled within the prescribed time limits of Regulation (EC) No 1049/2001.

Following this discussion, by email of 8 August 2019, you agreed to limit your request to all confirmatory applications from 2010 until the present day.

Based on the above, the European Commission has identified the following documents as falling within the scope of your request:

- Confirmatory application registered under number Gestdem 2013/3238 of 6 September 2013(hereafter ‘document 1’);
- Confirmatory application registered under number Gestdem 2013/6264 of 24 February 2014 (hereafter ‘document 2’);
- Confirmatory application registered under number Gestdem 2014/0046 of 24 February 2014 (hereafter ‘document 3’);

- Confirmatory application registered under number Gestdem 2014/2070 of 15 July 2014 (hereafter ‘document 4’);
- Confirmatory application registered under number Gestdem 2014/3009 of 3 November 2014 (hereafter ‘document 5’);
- Confirmatory application registered under number Gestdem 2015/3273 of 17 August 2015 (hereafter ‘document 6’);
- Second confirmatory application registered under number Gestdem 2015/3273 of 7 September 2015 (hereafter ‘document 7’);
- Confirmatory application registered under number Gestdem 2015/5112 of 9 November 2015 (hereafter ‘document 8’);
- Confirmatory application registered under number Gestdem 2015/5756 of 14 December 2015 (hereafter ‘document 9’);
- Confirmatory application registered under number Gestdem 2017/6695 of 8 January 2018 (hereafter ‘document 10’);

1. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

In accordance with article 4(4) of Regulation (EC) No 1049/200, third parties consultations took place regarding disclosure of part of the documents.

After taking into account the opinion of the third parties consulted and after having examined the documents, we hereby inform you that wide partial access is granted to them, subject only to the redaction of the 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.

1.1. 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.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.

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.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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’). 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 requested documents contain the personal data of various applicants for access to documents. The names, surnames, contact details and professional activities of people 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 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.

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

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.

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 subjects' 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 (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 are reasons to believe that the legitimate interests of the individuals concerned would be prejudiced by disclosure of the personal data.

2. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

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

3. PARTIAL ACCESS

Please note that partial is granted to the requested documents, as only the personal data has been redacted in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

4. 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 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: (10)