



## EUROPEAN COMMISSION

Brussels, 18.1.2019  
C(2019) 590 final

  
**OUT OF SCOPE**  


Belgium

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation No 1049/2001 - GESTDEM 2017/6312**

Dear ,

I refer to your email of 12 October 2018, registered on 15 October 2018, 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> (hereafter ‘Regulation No 1049/2001’).

I apologise for the delay in the handling of your request.

**1. SCOPE OF YOUR REQUEST**

In your initial application of 2 November 2017, addressed to the European Commission’s Directorate-General for Communications Networks, Content and Technology, you requested access to ‘[a]ll documents related to the official visit of Commissioner Günther Oettinger to the United States (7-11 October 2016)’. You stated that ‘[d]ocuments should include travel expenses, travel plans, official calendar, minutes of meetings, memo drafted by the [European] Commission and the EU embassy to the US to prepare the visit.’

In its initial reply of 2 October 2018, the Directorate-General for Communications Networks, Content and Technology identified 18 relevant documents. The Directorate-General for Communications Networks, Content and Technology:

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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.

- clarified that three documents had already been published by the European Commission and provided the corresponding internet links;
- refused access to two documents on the basis of Article 4(1)(a), third indent<sup>3</sup> and Article 4(3) of Regulation No 1049/2001, which provide for the protection of, respectively, international relations and the decision-making process; and
- granted partial access to 13 documents on the basis of Article 4(1)(b) of Regulation No 1049/2001, which provides for the protection of privacy and the integrity of the individual. In addition, eight of these 13 documents were redacted on the basis of Article 4(1)(a), third indent and Article 4(3) of Regulation No 1049/2001.

In your confirmatory application, whilst you contest the proper identification of all documents falling under the scope of your request, as carried out by the Directorate-General for Communications Networks, Content and Technology, you do not dispute the partial/full refusal opposed by the latter concerning the public disclosure of 15 of the 18 documents identified as relevant.

The scope of the present decision is therefore circumscribed accordingly.

In this context, I note that you reiterate that your request encompasses documents related to the travel expenses of the Commissioner and his team from Europe to the United States and back, as well as within the United States. Moreover, you clarify that the requested documents include plane(s) tickets, taxi(s) and other means of transportation receipts, meal bills and hotel bookings. You also indicate that the documents can be in the form of receipts, but also invoices, certification of bank payments or transfers.

You underpin your request with detailed arguments, which I address in the corresponding sections below.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION NO 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation No 1049/2001, the Secretariat-General of the European Commission conducts a full review of the reply given by the relevant Directorate-General at the initial stage.

As a preliminary point, I would like to note that, in accordance with the code of conduct for the Members of the European Commission<sup>4</sup>, Commissioners have the obligation ‘to conduct missions in compliance with the rules in the Financial Regulation, the internal rules on the implementation of the general budget of the European Union, the Guide to Missions and the rules set out in Annex 2. A mission is defined as travel in the exercise of his or her duties by a Member away from the Commission's place of work’.

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<sup>3</sup> Due to a clerical error, for which we apologise, the initial reply refers to the ‘second’ indent of this provision instead of ‘third’ indent.

<sup>4</sup> Commission Decision of 31.1.2018, C(2018)700 final, Article 6(2).

Moreover, the code of conduct for the Members of the European Commission provides that '[f]or reasons of transparency, the [European] Commission will publish an overview of mission expenses per Member every two months covering all missions undertaken unless publication of this information would undermine the protection of the public interest as regards public security, defence and military matters, international relations or the financial, monetary or economic policy of the Union or a Member State.'<sup>5</sup>

The code of conduct entered into force on 1 February 2018. Accordingly, since 28 February 2018, information pertaining to the mission costs of the Members of the Commission has been proactively published every two months. This proactive publication does not, however, cover missions that took place before December 2017.

Against this background, the information pertaining to the mission costs of Commissioner Oettinger is available under the link below:

[http://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=f24e4f06-d181-4f58-9604-3aaf3ce391ea&missionsperiod=2017\\_6](http://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=f24e4f06-d181-4f58-9604-3aaf3ce391ea&missionsperiod=2017_6)

In this instance, there is, however, no information in respect to the specific mission in which you expressed an interest, due to the fact that it took place in 2016, namely, two years before the Commission started publishing Commissioners' mission expenses and before December 2017.

Nevertheless, under the code of good administrative behaviour, I am pleased to release the following aggregated data, which could be retrieved from the European Commission database regarding missions (namely, the 'Missions Integrated Processing System'), in relation to the expenses incurred by Commissioner Oettinger during his official visit to the United States from 7 to 11 October 2016:

Travel costs	7.873,33 EUR
Accommodation costs	1.503,16 EUR
Daily allowances	476,99 EUR
Miscellaneous costs	880,79 EUR
Total costs	10.734,27 EUR

Furthermore, I would like to inform you that, in the context of the review of the initial decision of the Directorate-General for Communications Networks, Content and Technology, additional documents were identified as falling within the scope of your request.

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<sup>5</sup> *Ibid.*

These documents relate to the ‘travel expenses’ of Commissioner Oettinger and consist of the following categories:

- Travel tickets;
- Local transportation;
- Hotel bills; and
- Other miscellaneous invoices and pay slips.

I regret, however, to inform you that the documents within these various categories contain personal data and can therefore not be disclosed, as they are protected in their entirety under the exception for the protection of privacy and the integrity of the individual which is laid down in Article 4(1)(b) of Regulation 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 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 (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>6</sup> (hereafter ‘Regulation No 2018/1725’).

In the *Psara* case, the General Court reiterated that Article 4(1)(b) ‘is an indivisible provision [which] requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, in particular with Regulation No 45/2001’ and that ‘[it] establishes a specific and reinforced system of protection of a person whose personal data could, in certain cases, be communicated to the public [...]’.<sup>7</sup>

Notwithstanding the fact that this judgment referred to Regulation No 45/2001, it applies by analogy to Regulation No 2018/1725, as, in principle, the rest of the case law pertaining to the former.

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<sup>6</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>7</sup> Judgment of 25 September 2018, *Maria Psara and Others v European Parliament*, T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 65.

Article 3(1) of Regulation No 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice ruled that any information that, due to its content, purpose or effect, is linked to a particular person, qualifies as personal data.<sup>8</sup>

In the *Rechnungshof* case law, the Court of Justice further confirmed that ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.<sup>9</sup>

The General Court also stressed that ‘[t]he Court previously held that derogations from the protection of personal data must be interpreted strictly’.<sup>10</sup>

In this instance, the documents falling under the scope of your request are travel tickets, local transportation and hotel bills and other miscellaneous invoices and pay slips. These documents contain information concerning identified natural persons, namely Commissioner Oettinger and members of his team and/or the European Commission staff. They also reveal in a detailed manner how, where and when the Commissioner and the other above-mentioned individuals spent their respective allowances.

Therefore, they consist of information that qualifies as personal data.

The public disclosure of these personal data would consequently constitute processing (transfer) of personal data within the meaning of Article 9(1) (b) of Regulation No 2018/1725.

Pursuant to this provision, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if [...] the 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 both of these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation No 2018/1725, can the transmission of personal data occur.

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<sup>8</sup> Judgment of 20 December 2017, C-434/16, *Peter Novak v Data Protection Commissioner*, EU:T:2018:560, paragraphs 33-35

<sup>9</sup> Judgment of 20 May 2003, C-465/00, C-138/01 and C-139/01, *Rechnungshof v Österreichischer Rundfunk and others*, EU:C:2003:294, paragraph 73.

<sup>10</sup> Judgment of 25 September 2018, *Maria Psara and Others v European Parliament*, T-639/15 to T-666/15 and T-94/16, *op. cit.*, paragraph 68.

According to settled case law, the condition of necessity laid down in Article 9(1)(b) of Regulation No 2018/1725 requires the demonstration by the applicant that the transfer of personal data is the most appropriate of the possible measures for attaining his/her objective, and that it is proportionate to that objective.’<sup>11</sup>

In your application, you state that ‘[t]here is a public interest to know how much a foreign trip of a European [C]ommissioner and his team cost to EU taxpayers’ and that ‘[t]his public interest matters also for foreign trips which took place [...] in October 2016.’

Against this background, and in light of the fact that the aggregated expenses of the trip in question are hereby disclosed, I consider that the transfer of the personal data of Commissioner Oettinger and his team, contained in the requested documents, would go beyond what is necessary for attaining the objective of ensuring the transparency of the costs pertaining to the mission, and is therefore disproportionate to that purpose.

Your argument pursuant to which your request concerns ‘only [...] a single trip of a European Commissioner (and his team)’ is irrelevant in this respect.

Having regard to the circumstances under which you request access to the personal data in question, I consider that neither in your initial, nor in your confirmatory application, have you established the necessity of their public disclosure.

Therefore, I conclude that the transfer of personal data contained in the requested documents does not fulfil the requirement of lawfulness provided for in Article 5 of Regulation No 2018/1725.

Consequently, the travel tickets, local transportation and hotel bills and other miscellaneous invoices related to the mission of Commissioner Oettinger must be withheld under the exception that is provided by Article 4(1)(b) of Regulation No 1049/2001, as there is no need to disclose them publicly and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

The fact that Article 4(1)(b) of Regulation No 1049/2001 is an absolute exception that does not require the institution to balance the exception defined therein against a possible public interest in disclosure, only reinforces this conclusion.

Under the code of good administrative behaviour, I would like, however, to note that pursuant to the regulatory framework for mission expenses,<sup>12</sup> all official travel is undertaken in the most cost-efficient way possible, according to the needs of the mission. Officials are indeed required to book:

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<sup>11</sup> Judgment of 15 July 2015, *Dennekamp v Parliament*, T-115/13, EU:T:2015:497, paragraph 77.

<sup>12</sup> In addition to the above-mentioned Code of Conduct for Members of the Commission, see Commission decision of 18.11.2008, ‘General implementing provisions adopting the Guide to missions for officials and other servants of the European Commission’, C(2008)6215.

- hotel rooms within strict price limits (per country or city); and
- the cheapest transportation option available on the market at the time of the purchase.

Any derogation from these guidelines can only be granted under exceptional and duly justified circumstances.

### **3. NO PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation No 1049/2001, I have considered the possibility of granting partial access to the documents requested. However, for the reasons explained above, no meaningful partial access is possible without undermining the interest of privacy and the integrity of the individual protected under Article 4(1)(b) of Regulation No 1049/2001.

### **4. MEANS OF REDRESS**

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions provided respectively under Article 263 and Article 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the European Commission*  
*Martin SELMAYR*  
*Secretary-General*