



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

Directorate A - Multilateral Affairs, Strategy, Analysis, Evaluation
Director (acting)

Brussels
TRADE.A/IG

Dear Madam,

I refer to your email of 11 January 2021 in which you make a request for access to documents under Regulation (EC) No 1049/2001 ("Regulation 1049/2001"), and which was registered on the XX under the reference GestDem No 2021/0147.

1. Scope of your request

You request access to the following documents:

-All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, transcripts, recordings and minutes/notes) relating to the OpenEU (online) workshop with Mr Ignacio Garcia Bercero on 4th December 2020, organised by Logos.

We have identified five documents falling within the scope of your request. We enclose a list and copy of the documents requested.

2. Assessment and Conclusions under Regulation 1049/2001

In accordance with settled case law, when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001. Such assessment is carried out in a multi-step approach. First, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception. Second, it must examine whether disclosure of the parts of the document in question poses a "reasonably foreseeable and not purely hypothetical" risk of undermining the protection of the interest covered by the exception. Third, if it takes the view that disclosure would undermine the protection of any of the interests

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

Ms Lora Verheecke
9 rue du Bronze
1070 Bruxelles
Belgium

Advance copy by email: ask+request-8913-f409dcc2@asktheeu.org

defined under Articles 4(2) and 4(3) of Regulation 1049/2001, the institution is required "to ascertain whether there is any overriding public interest justifying disclosure".

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents, "the exceptions to that right [...] must be interpreted and applied strictly".

Having examined the documents in light of the applicable legal framework, I would like to inform you that partial access can be granted to the documents where only some parts have been withheld in accordance with Article 4.1(b) of Regulation 1049/2001. The reasons justifying the application of the exceptions are set out below in Sections 2.1, and 2.2. Section 3 contains an assessment of whether there exists an overriding public interest in the disclosure.

2.1. Protection of privacy and integrity of the individual

Article 4(1) (b) of Regulation 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 ('Regulation 2018/1725').

Indeed, 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. Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.

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

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.

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 application, 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 accordance with Article 7(2) of Regulation 1049/2001, you are entitled 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

Transparency, Document Management & Access to Documents unit SG-C-1

BERL 7/076

1049 Bruxelles

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

Yours faithfully,

Ignacio GARCIA BERCERO

Enclosure: List of documents - Disclosed documents