



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate B  
SG-B-3 Ethics

Brussels,  
SG/B.3/MIA

23 DEC. 2014

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**Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2014/6009**

Dear Ms Cann,

We refer to your e-mail dated 12 December 2014, registered on the same date under the above-mentioned reference number.

In your e-mail, you request access to *"... all applications and accompanying materials made by ex-Commissioner Maria Damanaki for new professional activities including to work for The Nature Conservancy and any other applications for authorisation which she has made for new professional activities under the commissioner code of conduct. I would further like to request any emails, correspondence and meeting notes which relate to these applications; all opinions from the ad hoc ethical committee on each case; and the Commission decision(s)."*

I have identified several documents falling under the scope of your request.

According to point 1.2, 1st paragraph of the Code of Conduct of Commissioners<sup>1</sup>, *..."Whenever former Commissioners intend to engage in an occupation during the eighteen months after they have ceased to hold office, whether this is at the end of their term or upon resignation, they shall inform the Commission in good time, as far as possible with minimum four week notice. The Commission shall examine the nature of the planned occupation"*.

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<sup>1</sup> SEC(2004)1487/2 of 24 November 2004

The Commission's decision a decision concerning the request for authorisation of a post-mandate activity introduced by former Commissioner Ms Damanaki has not yet been adopted. Therefore, following the examination of the concerned documents, I must inform you that no access can be granted to these documents.

As I have already explained you in detail in the framework of the replies to your access to documents requests n° 2014/5072, 2014/5422 and 2014/5017, the requested documents are covered by the exception foreseen in Article 4(3), first subparagraph, (protection of the decision-making process) of Regulation 1049/2001. This provision states that *... "[a]ccess to a document drawn up by an institution for internal use or received by an institution which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure".*

From the above-mentioned description of the context and the state of play of the preparatory work, it is obvious that the decision-making process is ongoing. Disclosure of these documents would lead to external interferences with the ongoing internal discussions and the right of the Commission to protect its "space to think". External pressure would be detrimental to the decision-making process of the Commission in this matter.

Moreover, access to certain parts of the documents have also to be refused as they are covered by the exception foreseen in Article 4(1) letter b) (protection of privacy and personal data) of Regulation No 1049/2001.

The information provided to the Commission under the above-mentioned procedure is directly related to the ethical obligations of the former Commissioner and to her responsibility to avoid any risk of conflict of interest when intending to engage in post-office activities. This information qualifies as personal data.

In its judgment in the Bavarian Lager case<sup>2</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001<sup>3</sup> (hereinafter the 'Data Protection Regulation') becomes fully applicable.

Article 2(a) of Data Protection Regulation provides that "personal data" shall mean any information relating to an identified or identifiable person [...]. As the Court of Justice confirmed in Case C-465/00 (Rechnungshof)<sup>4</sup>, there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life."

The requested documents contains- elements on the planned professional activities of a former Commissioner which undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about an

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<sup>2</sup> Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, European Commission v The Bavarian Lager Co. Ltd.

<sup>3</sup> 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, Official Journal L 8 of 12.1.2001

<sup>4</sup> Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between Rechnungshof and Österreichischer Rundfunk, paragraph 73.

identified or an identifiable person. According to Article 8(b) of the Data Protection Regulation, which is fully applicable in this case, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.<sup>5</sup> Those two conditions are cumulative.<sup>6</sup>

I consider that in the present case the necessity of disclosing the aforementioned personal data to you has not been established in your request. Therefore, access to the personal data contained in relevant parts of the above-mentioned documents has to be refused on the basis of the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

I have also examined the possibility of granting you a partial access to the above-mentioned documents. However at this stage, even their partial disclosure will seriously undermine the internal decision-making process and interfere with the autonomy of the Commission in taking a decision in this matter.

The exception laid down in Article 4(3), first subparagraph of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure.

Such an interest, firstly, has to be public and, secondly, has to outweigh the damage caused by the release, i.e. it must outweigh the interest protected by virtue of Article 4(3), first subparagraph of Regulation 1049/2001. I note that you do not mention any particular public interest in disclosure at this stage. For its part, the Commission does not find, at this point in time, that there is a public interest in disclosing the requested documents that would outweigh the risk of undermining the protection of the Commission's decision-making process.

If you wish to appeal against this decision, you should write to the Commission Secretary-General at the address [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu). You have fifteen working days from receipt of this letter in which to appeal.



Marianne Klingbeil  
Director SG B f.f.



Cc: [SG-DOSSIERS-ACCES@ec.europa.eu](mailto:SG-DOSSIERS-ACCES@ec.europa.eu)

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<sup>5</sup> Cf. Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between Rechnungshof and Österreichischer Rundfunk, paragraph 73.

<sup>6</sup> Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, Commission v Bavarian Lager, paragraphs 56, 63, 68, 76-79.