



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

Directorate B

Brussels,  
SG/B.3/MIA-DCB

Ms Vicky Cann  
CEO  
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By e-mail:

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**Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2015/1981**

Dear Ms Cann,

We refer to your e-mail dated 2 April 2015 and registered on the same date under the above-mentioned reference number.

*In your e-mail, you request "Further to the documents already received under GestDem 2014/5017, I am requesting copies of all subsequent applications by Janez Potočnik which seek Commission authorisation 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 copies of the Commission's final decision in each case."*

I have identified 19 documents falling within the scope of your request:

1. Letter of Mr Potočnik to Ms Day of 09.01.2015 [Ref. Ares(2015)260999].
2. Letter of Ms Day to Mr Potočnik of 28 01.2015 Ref. Ares(2015)336470];
3. Letter of Mr Potočnik to Ms Day of 04.02.2015 [Ref. Ares(2015)450635];
4. Note of Ms Day to the Ad Hoc Ethical Committee of 06.02.2015 [Ref. Ares(2015)507841];
5. Opinion of the Ad Hoc Ethical Committee of 18.02.2015 [Ref. Ares(2015)820892-26.02.2015];
6. LS Consultation E-mail of SG of 18.02.2015 and e-mail of LS of 19.02.2015 [Ref. Ares(2015)730019];
7. Commission decision C(2015)1328 of 13 March 2015;
8. PV (2015) 2120 of 18 March 2015;

9. Letter of Ms Day to Mr Potočnik of 18.03.2015 [Ref. Ares(2015)1199150];
10. Note of Ms Day to the Ad Hoc Ethical Committee of 18.03.2015 [Ref. Ares(2015)1198018];
11. Letter of Mr Potočnik of 22.02.2015 to Ms Day [Ref. Ares(2015)750041];
12. Note of Ms Day to the Ad Hoc Ethical Committee Ad of 16.03.2015 [Ref. Ares(2015)1138151];
13. Complementary opinion of the Ad Hoc Ethical Committee of 23.03.2015 [Ref. Ares(2015)1255180];
14. E-mail of the Ad Hoc Ethical Committee of 23.03.2015 [Ref. Ares(2015)1254945];
15. LS Consultation- E-mail of SG of 25.03.2015 and e-mail of LS of 25.03.2015 [Ref. Ares(2015)1530504];
16. Commission Decision C(2015)2475 of 10.04.2015;
17. PV (2015) 2122 of 15.04.2015;
18. Letter of Ms Day to Mr Potočnik of 15.04.2015 [Ref. Ares(2015)1609513];
19. Note of Ms Day to the Ad Hoc Ethical Committee Ad of 15.04.2015 [Ref. Ares(2015)1611296].

You will find a detailed list enclosed.

I would like to call your attention to the fact that documents n° 4 and 14 contain in its enclosures templates also called "information fiches" to the attention of the Ad Hoc Ethical Committee. The information in these documents can be found in the opinion of the Committee and in the Commission's decision disclosed below. Consequently, I understand that the content of these fiches is of no interest to you. If you do not share this view, please let us know.

Please note that this reply covers the Decision adopted by the Commission in its 2120th and 2122th meetings of 18 March 2015 and of 15 April 2015 on Mr Potočnik's request for authorisation of several post-mandate activities. Therefore, your recent request for access to documents Gestdem n° 2015/2374 registered on 23 April 2015, concerning the Commission's decision taken on 15 April 2015 which is addressed in this reply, is devoid of purpose.

## **1. PUBLIC DOCUMENTS**

Documents n° 8 and 17 contain the extracts of the minutes of the Commission meetings of 18 March 2015 and 15 April 2015 in which the decisions on Mr Potočnik post-mandate activities were adopted. Please note that the minutes are already available to the public and therefore, copies are not enclosed.

## **2. CONCLUSIONS UNDER REGULATION 1049/2001**

Following the examination of your request and of the documents concerned, I am pleased to grant you:

- Full access to the documents, cover notes and draft decisions attached to documents n° 1, 4, 7 and 10, 16 and 19. Please note that the deleted parts of document n° 10 contain information on decisions regarding other former Commissioner, which is not covered by your request and therefore, falls outside

its scope. This is also the case of document n° 19. However, the deleted parts of the document are covered by the scope of your remaining requests concerning post-mandate activities of the concerned former Commissioners (n° 2015/1981, 2015/2370, 2015/2375, 2015/2376 and 2015/2377) and will be examined in the corresponding replies;

- Partial access is granted to the notes and the cover e-mails accompanying documents n° 6, 9, 13, 14, 15 and 18. Partial access is also granted to the draft decisions attached to documents n° 6, 12 and 15 and to the documents n° 2, 3, 5, 11, 14 and 16.

You will find copies enclosed.

Please note that the decisions of the Commission attached to documents n° 9 and 10 correspond to document n° 7 and those attached to documents n° 18 and 19 correspond to document n° 16.

The reasons for the refusal of the deleted parts of the above-mentioned documents are set out below.

The deleted parts of the above-mentioned documents n° 2, 9 and 18 contain the e-mail address and the postal address of the former Commissioner and for obvious reasons this is personal data covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001. This is also the case of the deleted parts in the cover e-mails accompanying documents n° 5, 6 and 15, which contain the names and the e-mails of the Commission's officials in charge of the file. Document n° 13, contains the e-mail addresses of the Members of the Ad Hoc Ethical Committee. Deleted parts in the text of the draft decisions and other documents attached to documents n° 6, 12 and 15 and in documents n° 3, 5, 7, 11, 14 and 16, also refer to contractual details related to the envisaged activities as Member of the Steering Committee for "A Vision for Europe towards sustainable and circular economy" and as a Chairperson of the "CEPF Long term vision for the Balkans sub-region of the Mediterranean Biodiversity Hotspot". Disclosing this information would reveal personal data and may undermine the privacy of the concerned Commissioner as well as of Commission officials and members of the Ad Hoc Ethical Committee.

In its judgment in the *Bavarian Lager* case<sup>1</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>2</sup> (hereinafter the 'Data Protection Regulation') becomes fully applicable.

The concerned documents contain elements which undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about an 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

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<sup>1</sup> Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

<sup>2</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

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>3</sup> Those two conditions are cumulative.<sup>4</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.

Consequently, access to personal data contained in the 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.

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.

Annexes

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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>3</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>4</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.