



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B

Brussels,
SG/B.3/MIA-DCB

Ms Vicky Cann
CEO
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B-1050 Brussels

By e-mail:

ask+request-1949-db34a2d5@asktheeu.org

Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2015/2377

Dear Ms Cann,

We refer to your e-mail dated 23 April 2015 and registered on 24 April 2015, under the above-mentioned reference number.

In your e-mail, you request "... Further to the documents already requested under GestDem 2014/5422 and 2015/348, I am requesting copies of all subsequent applications by former President José Manuel BARROSO 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 5 documents falling within the scope of your request:

1. Letter of Mr Barroso to President Juncker of 17.03.2015 [Ref. Ares(2015)1198372];
2. LS consultation- E-mail of SG of 25.03.2015 and e-mail of LS of 08.04.2015 [Ref. Ares(2015)1349402];
3. Commission Decision C(2015)2448 of 10.04.2015;
4. PV (2015)2122 of 15.04.2015;
5. Letter of Ms Day to Mr Barroso of 15.04.2015 [Ref. Ares(2015)1607766].

You will find a detailed list enclosed.

1. PUBLIC DOCUMENTS

Document n° 4 contains the extracts of the minutes of the Commission's meeting in which the decision on Mr Barroso post-mandate activities was adopted. Please note that the minutes are already available to the public and therefore, a copy is 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 document n° 3 and to the draft decisions attached to the e-mails in document n° 2. Please note that the document attached to document n° 5 corresponds to document n° 3.
- Partial access to document n° 1 and to the cover note in document n° 5. Partial access is also granted to the e-mails in document n° 2.

You will find copies enclosed.

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

The deleted parts of documents n° 1 and in the cover letter in document n° 5 contain the e-mail and the postal address of the former President 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 e-mails included in document n° 2, which contain the names and the e-mail addresses of the Commission's officials in charge of the file. Disclosing this information would reveal personal data and may undermine the privacy of the concerned Commissioner as well as of Commission officials.

In its judgment in the *Bavarian Lager* case¹, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001² (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 transferred to recipients if the recipient establishes the necessity of having the data

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

² 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 and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.³ Those two conditions are cumulative.⁴

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. 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.

Oliver Boileau

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³ 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.

⁴ 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.