



EUROPEAN COMMISSION
Secretariat-General

The Secretary-General

Brussels
SG.B4/FB/mbp - sg.dsg2.b.4(2015)3298903

By registered mail:

Arun Dohle
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**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2015/3188**

Dear Mr Dohle,

I am writing in reference to your email of 23 June 2015, registered on 24 June 2015, by which you lodge a confirmatory application in accordance with Article 7(2) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation 1049/2001').

Through your initial application of 14 June 2015, you requested access to *[a]ll documents, including but not limited to the invitation, internal communication, list of participants, conference documents, of the 8-12 June 2015 - Special Commission on the practical operation of the 1993 Intercountry Adoption Convention* (hereinafter, the Fourth Special Commission).

By e-mail of 23 June 2015 the Directorate-General for Justice and Consumers (DG JUST) granted access to the invitation sent to the Commission and the Commission's confirmation of attendance.

In your confirmatory application, you request an internal review of this position limiting your application to the *list of participants* and the *mission report* of the Commission representative to the Fourth Special Commission.

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L145, 31.05.2001 p.43.

Against this background, the Commission has carried out a renewed, thorough search for the documents requested. Following this renewed search and consultation of the Hague Conference on Private International Law, I am pleased to inform you that the Commission has identified one further document which falls under your request for access to documents, i.e. the final list of participants of the Fourth Special Commission provided by the Hague Conference on Private International Law.

Partial access is granted to the document, subject to the redaction of names and e-mail addresses of third-party staff (besides those of the highest rank), based on the exception of Article 4(1)(b) of Regulation 1049/2001 (*protection of privacy and integrity of the individual*)³.

Article 4(1)(b) of Regulation 1049/2001 provides that *access to documents is refused where disclosure would undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*.

In its judgment in the *Bavarian Lager* case⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001⁵ (hereinafter the 'Data Protection Regulation') becomes fully applicable.

Article 2(a) of the 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*)⁶, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'*. The names and e-mail addresses included in the list of participants received from the Hague Conference on Private International Law undoubtedly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

Pursuant to Article 8(b) of the same Regulation, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC⁷ 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. Those two conditions are cumulative.⁸ In your confirmatory application, you do not demonstrate the need for, nor any particular interest in obtaining the personal data concerned. The necessity of disclosing the personal data of these individuals has therefore not been established in the present case.

Therefore, I conclude that certain personal data contained in the requested document must be protected pursuant to Article 4(1)(b) of Regulation 1049/2001.

³ As regards the personal data included in the document requested, the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

⁴ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

⁵ 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

⁶ 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.

⁷ European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281 of 23.11.1995.

⁸ Judgment of the Court of Justice of 29 June 2010, *Bavarian Lager*, quoted above, paragraphs 77-78.

Please find a copy of the document annexed.

Regarding the second document to which you request access in your confirmatory application, i.e. the *mission report* of the Commission representative to the Fourth Special Commission, DG JUST on 14 July 2015 provided you with a reply under registration number GESTDEM 2015/3429 and disclosed the document in question (subject to the redaction of personal data).

Finally, I draw your attention to the means of redress available against this decision. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Catherine Day', with a stylized flourish at the end.

Catherine Day

Enclosure (1):

- Final list of participants of the Fourth Special Commission provided by the Hague Conference on Private International Law, June 2015 (Ares(2015) 2804065)