



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B

Brussels,
SG/B.3/MIA

Ms Vicky Cann
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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 2015/3951

Dear Ms Cann,

We refer to your e-mail dated 28 July 2015 and registered on the same date under the above-mentioned reference number.

In your e-mail, you request "...copies of the applications and accompanying materials made by ex-Commissioner Joaquín Almunia for the following new professional activities: Member of the Advisory Board of the Centre for European Policy Studies and Member of the Scientific Committee for the study 'Building the Energy Union to Fuel European Growth' by the European House – Ambrosetti". 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)."

We have identified 10 documents falling within the scope of your request:

1. E-mail to Ms Day of 09.06.2015 [Ref. Ares(2015)2425744];
2. Note of Ms Day to the members of the Ad Hoc Ethical Committee of 15.06.2015 [Ref. Ares (2015)2496452];
3. Note of Ms Day to Mr Almunia of 26.06.2015 [Ref. Ares(2015)2692241] and E-mail from the Ad Hoc Ethical Committee of 17.06.2015 [Ref. Ares (2015)2628756];
4. E-mail to Ms Day of 28.06.2015 and annex [Ref. Ares(2015)2707499];
5. Opinion of the Ad Hoc Ethical Committee of 03.07.2015 [Ref. Ares(2015)2801407];

6. LS consultation- E-mail of SG of 03.07.2015 and reply of LS of 08.07.2015 [Ref Ares (2015)2818487 and Ref. Ares(2015)2874350];
7. Commission Decision C(2015)4885 of 10.07.2015;
8. PV (2015)2135 of 15 July 2015;
9. Letter of Ms Day of 15.07.2015 to Mr Almunia [Ref. Ares(2015)2983948];
10. Note of Ms Day of 15.07.2015 to the members of the Ad Hoc Ethical Committee [Ref. Ares(2015)2983850].

You will find a detailed list enclosed.

1. PUBLIC DOCUMENTS

Document n°8 contains the extract of the minutes of the Commission meeting in which the decision on former Commissioner Mr Almunia's post-mandate activities were 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 the cover notes to documents n° 2 and n° 10.
- Partial access to documents n°1, n° 3, n° 4 (e-mail), n° 5, the cover e-mails and the draft decisions attached to document n° 6, document n° 7 and the cover note to document n° 9.

You will find copies enclosed.

However, access is refused to the entirety of the annex to the e-mail in document n° 4.

Please note that the document attached to documents n° 9 and n°10 corresponds to document n° 7.

I would like to call your attention to the fact that document n° 2 contains in its enclosures a "template" also called "information fiche" to the attention of the Ad Hoc Ethical Committee. The information in this document can be found in the opinion of the Committee and in the Commission's decision disclosed below. Consequently, I understand that the content of this fiche are of no further interest to you. If you do not share this view, please let us know.

The reasons for the access refusal to the above-mentioned documents and parts thereof are set out below.

2.1 PROTECTION OF PRIVACY AND THE INTEGRITY OF THE INDIVIDUAL

The annex to document (e-mail) n° 4 is a confidential document containing the contractual terms and other details of former Commissioner Mr Almunia's envisaged

occupation in "The European House-Ambrossetti". This document contains personal data covered by the exception provided for in Article 4 (1) (b) of Regulation 1049/2001.

This exception also applies to the deleted parts in document n° 5, in the draft decisions attached to document n° 6 and in document n° 7.

The remaining deleted parts of the e-mails in documents n° 1 and 4, in the cover note to documents n° 3 and n° 9 contain the e-mail address of the former Commissioner and for obvious reasons, this is also personal data and is 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 annex to document n° 3, n° 5 and n° 6, which contain the names of third parties and/or the e-mails of the Commission officials in charge of the file. Disclosing this information would reveal personal data and may undermine the privacy of the concerned former 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.

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*)³, there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "*private life*."

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 transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.⁴ Those two conditions are cumulative.⁵

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

³ 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 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.

⁵ 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.

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.

2.2 PROTECTION OF COMMERCIAL INTERESTS

Article 4(2) first indent of Regulation No. 1049/2001 stipulates that: *"The institutions shall refuse access to a document where disclosure would undermine the protection of:... — commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure."*

The Commission considers that the disclosure of the letter annexed to document (e-mail) n° 4 which contains the details of the contractual conditions of the envisaged activity, would undermine the commercial interests of "The European House-Ambrossetti".

Disclosure of this letter would make public details of the contractual terms proposed to the former Commissioner. Disclosing these parts could give an idea of the objectives of the company, areas of interest and consequently, harm its commercial interests.

On the basis of the above reasoning, the Commission considers that the letter annexed to document (e-mail) n° 4 containing the contractual details of the envisaged activity is covered by the exception to the right of access laid down in Article 4(2), first indent.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions under Article 4(2) and (3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, first, be a public interest and, second, outweigh the harm caused by disclosure, i.e. outweigh the protected interest.

In your application you did not state anything which justified an overriding public interest going beyond the commercial interests of the company concerned.

The Commission does not find, at this point in time, that there is a public interest in disclosing the above-mentioned document that would outweigh the risk of undermining the protection of the commercial interests of the company concerned.

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.



Marianne Klingbeil
Director SG B f.f.

Annexes

Cc: SG-DOSSIERS-ACCES@ec.europa.eu