EUROPEAN COMMISSION

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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° 1049/2001[1]**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2015/6011**

Dear Ms Darbishire,

I refer to your message of 17 February 2016[2], registered on 22 February 2016, in which
you submit a confirmatory application in accordance with Article 7(2) of Regulation
(EC) No 1049/2001 regarding public access to European Parliament, Council and
Commission documents[3] ('Regulation 1049/2001').

1.   SCOPE OF YOUR REQUEST

In your initial application of 16 November 2015, dealt with by the Office for the
Administration and Payment of Individual Entitlements (Hereafter: PMO) you requested
access to documents containing *information about the financial management system by*

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

[2]   This is your second confirmatory application concerning case 2015/6011. The first confirmatory
application was submitted on 28 January 2016 against tacit refusal of access to the requested
documents and was closed on 15 February 2016, i.e. when PMO provided the explicit reply to your
initial request.

[3]   Official Journal L 145 of 31.5.2001, p. 43.

which the Commissioner's expenses are processed and the database in which the data on expenses is held. You explained that you were interested in particular in:

> *- guidance manual or other instruction document or memo that explains by whom and how expenses are processed, including at which point and how and in which format and level of detail expenses claims are input into the electronic database system,*

> *- summary document or guidance manual or other relevant document on the database in which Commissioner's expense are processed/stored, which contains details on the structure of the database, including the fields that it contains.*

On 7 December 2015, PMO sent you a clarification request pursuant to Article 6(2) of Regulation 1049/2001. It explained that your application encompassed a broad range of various expenses (such as salaries, medical expenses and mission costs) and asked you to provide a more accurate description of the scope of your request. You replied on 11 December 2015 clarifying that your request was focused on mission and representation costs.

The Commission has identified the following documents as falling into the scope of your request:

- Guide to missions for Commission personnel, ref.: C(2008) 6215;
- Code of conduct for Commissioners, ref.: C(2011) 2904.

By letter of 12 February 2016, PMO granted full access to the above-mentioned documents.

In your confirmatory application of 17 February 2016 you specify that [you] *have not been provided with documents containing information that remotely begins to answer* [your] *request*.

You present a series of additional explanations clarifying further the scope of your request. In particular, you refer to (and repeat) your message of 11 December 2015 in which you clarified that [your] *request could be satisfied by:*
[1] *- a simple listing of the databases that* [the Commission holds] *for* [mission and representation] *expenses;*
[2] *- the core documentation on each of those databases;*
[3] *- documents that explain how such expenses are processes and stored.*

Providing a reply to point [1] would require creating a new document. The respective part of your request therefore does not fall under the scope of Regulation 1049/2001 which, according to Article 2(3), applies only to *existing* documents. In consequence, it has to be considered as a request for information.

Please find our reply below under point 4.

As regards point [2], I infer from the wording of your request and your subsequent clarifications that your request only concerns the core documentation concerning the processing and storage of Commissioners' mission and representation expenses.

As regards point [3], you specify in your message of 19 February 2016 that you would be interested in knowing the level of detail and the fields contained in e.g. *an Excel sheet, if we export data on Commissioners' mission expenses.*

The Commission has identified the following documents as falling into the scope of your request:

1) Manual entitled "How to introduce a mission order", version: January 2014;

2) Manual entitled "How to introduce a statement of expenses", version: January 2014

The above-mentioned manuals include information regarding the MIPS user interface, which defines the workflow for processing mission expenses, as well as the type of information to be introduced by users.

Given that, as mentioned above, the processing of representation costs takes place less frequently than the processing of mission costs, there are no documents, similar to those listed above, concerning RepCost. Therefore, no documents such as the ones mentioned above for mission costs, have been identified.

2.   ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following the above-mentioned review, I am pleased to inform you that wide partial access is granted to document (1) and full access is granted to document (2). Please find copies of the documents annexed.

The limited undisclosed parts of document (1) were redacted on the basis of the exception provided for in Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation 1049/2001. The detailed reasons are set out below.

2.1   Protection of the privacy and the integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that *The institutions shall refuse access to a document where disclosure would undermine the protection of (…) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

The undisclosed parts of document (1) contain screenshots of the MIPS interface illustrating the workflow described therein. These screenshots contain logins[4], telephone numbers, statutory positions and job references of specific Commission staff members. These are undoubtedly personal data in the meaning of Article 2(a) of Regulation 45/2001[5], which defines it as *any information relating to an identified or identifiable natural person (…); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.*

It follows that public disclosure of the above-mentioned information would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001.

In accordance with the *Bavarian Lager* ruling[6], when a request is made for access to documents containing personal data, Regulation 45/2001 becomes fully applicable. According to Article 8(b) of that Regulation, 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. Those two conditions are cumulative.[7] Only if both conditions are fulfilled, can the processing (transfer) of personal data be considered as compliant with the requirement of lawfulness provided for in Article 5 of Regulation 45/2001.

I would also like to bring to your attention the recent judgment in the *ClientEarth* case, where the Court of Justice ruled that the Institution does not have to examine *ex officio* the existence of a need for transferring personal data[8]. In the same ruling, the Court states that if the applicant has not established a need, the institution does not have to examine the absence of prejudice to the person's legitimate interests[9].

Neither in the initial, nor in the confirmatory application, have you established the necessity of disclosing any of the above-mentioned personal data. Therefore, I have to conclude that the transfer of personal data through the disclosure of the redacted parts of document (1) cannot be considered as fulfilling the requirement of lawfulness provided for in Article 5 of Regulation 45/2001.

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[4] The login based on a specific naming convention, together with telephone number and indication of organisational entity in which the staff member works (and which is not redacted), allows for determination of the staff member's identity.

[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.

[6] Judgment of the Court (Grand Chamber) of 29 June 2010, *European Commission v the Bavarian Lager Co. Ltd.*

[7] Judgment of the Court (Grand Chamber) of 29 June 2010, *European Commission v the Bavarian Lager Co. Ltd.*, paragraphs 77-78.

[8] Case C-615/13P, Judgment of the Court of Justice 16 July 2015 *ClientEarth v EFSA,* paragraph 47.

[9] Case C-615/13P, Judgment of the Court of Justice 16 July 2015 ClientEarth v EFSA, paragraph 47-48.

Consequently, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to publicly disclose the personal data included therein, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

Please note also that the exception provided for in Article 4(1)(b) of Regulation 1049/2001 does not require any assessment of the possible existence of an overriding public interest in disclosure.

3. MEANS OF REDRESS

I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

4. PARTS OF YOUR REQUEST FALLING OUTSIDE REGULATION 1049/2001

In order to reply to your information request to obtain *a simple listing of the databases that* [the Commission holds] *for* [mission and representation] *expenses*, I would like to provide some explanations regarding the workflow and tools used for processing Commissioners' mission expenses. These are the same as those used for processing expenses of Commission officials. Indeed, in both cases the Commission uses the same IT tool: the MIPS application.

Two (general) categories of data are stored in MIPS:

- information regarding costs actually incurred (*cash out*) in relation to a mission, together with supporting documentation (scanned accommodation bills, travel agency invoices, etc.);
- information on amounts reimbursed to a mission performer, calculated on the basis of limits and eligibility criteria provided for in the Guide to missions for Commission personnel and, in case of Commissioners, also in the Code of Conduct for Commissioners, which as explained in the initial reply of PMO contains certain derogations to the principles provided for in the Guide.

The same principle applies to representation costs. However, in the latter case the volume of data is significantly lower, as representation costs can only cover activities of Commissioners and senior Commission staff.

With regard to the representation costs, the Commission uses RepCost, an application based on the MIPS platform, to which each representation costs claim submitted by a Commissioner is encoded. However, RepCost contains only the global amount for each reimbursement claim, without the relevant costs components and underlying documentation.

In case of both MIPS and RepCost, encoding the relevant data and uploading the corresponding, scanned documentation (only in case of MIPS) is the responsibility of the administrative support staff within the respective DG or Commissioner's Cabinet.

Once the documentation underlying specific mission/representation costs is verified, the claim is recorded and the relevant reimbursement limits are applied, the amounts to be reimbursed are executed upon the approval of the competent Authorising Officer, and cleared by means of the Commission's accountancy software (ABAC).

I consider that these explanations reply to point [1] of your initial request.

Yours sincerely,

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

For the Commission
Alexander ITALIANER
Secretary General

Enclosures (2)