



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B

Brussels,
SG/B.3/MIA

Ms Vicky Cann
CEO
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B-1050 Brussels

By e-mail:

ask+request-2562-eb512e78@asktheeu.org

Subject: Your application for access to documents in accordance with Regulation 1049/2001– Ref. GestDem 2016/573

Dear Ms Cann,

We refer to your e-mail dated 8 February 2016 and registered on 9 February 2016 under the above-mentioned reference number.

In your e-mail, you request *"...all documents relating to the authorisation, by the Commission on 19 January 2016, of the new roles held or proposed by former Commissioner Štefan Füle. I would like to receive all applications for authorisation, 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 8 documents falling within the scope of your request:

1. Letter of Mr. Italianer to Mr Füle of 16.11.2015 [Ref. Ares(2015)5112469];
2. E-mail of Mr Füle to Mr. Italianer of 25.11.2015 [Ref. Ares(2015)5413813];
3. E-mail of SG of 27.11.2015 [Ref. Ares(2015)5453935];
4. E-mail of Mr Füle to Mr. Italianer of 03.12.2015 [Ref. Ares(2015)5554059];
5. Legal Service consultation- E-mail of SG of 15.12.2015 and reply of LS of 06.01.2016 [Ref Ares(2015) 5859252 and Ares(2016)74133];
6. Commission Decision C(2016)88 of 15.01.2016;
7. PV (2016)2152 of 19 January 2016;
8. Letter of Mr Italianer to Mr Füle of 19.01.2016 [Ref. Ares(2016)274674].

You will find a detailed list enclosed.

1. PUBLIC DOCUMENTS

Document n° 7 contains the extract of the minutes of the Commission meeting in which the decision on Mr Füle 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 partial access to documents n° 1 (e-mail) n° 2, n° 3, n° 4, the cover e-mails under document n° 5 and document n° 8 (cover letter).

Full access is granted to document n° 6 and to the draft decisions attached to the e-mails under document n° 5.

You will find copies enclosed.

Please note that the document attached to document n° 8 corresponds to document n° 6.

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

The deleted parts of the e-mail in document n° 1, n° 2 and n° 3 and the cover letter in document n° 8 contain the e-mail address of the former Commissioner which 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 under n° 5. Moreover, document n° 4 and the cover e-mails under document n° 5 contain as well the names and the e-mails 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 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 constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about

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

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 Justice of 20 May 2003, joined Cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

an identified or an identifiable person. According to Article 8(b) of the Data Protection 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.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.



Paraskevi Michou
Director SG B f.f.

Annexes

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

⁴ Judgment of the Court of Justice of 29 June 2010, Case C-28/08 P, Commission v Bavarian Lager, paragraphs 56, 63, 68, 76-79.