



EUROPEAN COMMISSION
Secretariat-General

Directorate B
The Director

Brussels, **13 SEP. 2018**
SG.B4/sg.dsg2.b.4(2018)

Mr Peter TEFFER
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Subject: Your application for access to documents pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents – ref. GestDem 2018/4682

Dear Mr Teffer,

I refer to your request of 3 September 2018, registered on 4 September 2018, by which you submit a request pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹.

You request access to ‘all documents related to the annual Seminar of the College of the Juncker Commission, held on 30 and 31 August, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations.’

1. SCOPE OF THE REQUEST

The European Commission has identified the following document as falling under the scope of your request:

Note to the Members of the Commission of 24 August 2018 concerning the College seminar of 30 and 31 August 2018 [SEC(2018)381].

¹ Official Journal L145 of 31.05.2001, p.43.

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111
http://ec.europa.eu/dgs/secretariat_general/

2. ASSESSMENT AND CONCLUSION UNDER REGULATION (EC) NO 1049/2001

Having examined this document under the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, I have decided to grant wide partial access thereto, subject solely to the redaction of the personal data contained therein, for the reasons explained below.

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document 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.'

The relevant undisclosed parts of the document contain the name and direct contact details of a Commission official not forming part of senior management, as well as the handwritten signature of the Secretary-General of the European Commission, which is biometric data.

These data undoubtedly constitute personal data within the meaning of Article 2(a) of Regulation (EC) No 45/2001² (hereinafter the Data Protection Regulation), which defines personal data 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.'

In consequence, public disclosure of these data in the requested document would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation (EC) No 45/2001.

In accordance with the *Bavarian Lager* ruling³, when a request is made for access to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable⁴.

According to the Court of Justice, 'there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life"'⁵. The names⁶ of the persons concerned, as well as information from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

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

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 29 June 2010, *European Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378.

⁴ *Idem*, paragraph 63.

⁵ Judgment of 20 May 2003, *Rechnungshof v Österreichischer Rundfunk and Others*, C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁶ Judgment in Case *European Commission v Bavarian Lager*, cited above, paragraph 68.

(EC) No 45/2001. 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 and the processing is lawful in accordance with the requirements of Article 5 of Regulation (EC) No 45/2001, can the processing (transfer) of personal data occur.

I would also like to bring to your attention the recent judgment in the *ClientEarth* Case, where the Court of Justice ruled that 'whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access'⁸.

I also refer to the *Strack* Case, where the Court of Justice ruled that the Institution does not have to examine by itself the existence of a need for transferring personal data.⁹

In your application, you do not refer to the necessity of disclosing any of the above-mentioned personal data.

Therefore, I have to conclude that the transfer of personal data through the full disclosure of the requested confirmatory decision and its annex does not fulfil the requirement of lawfulness provided for in Article 5 of Regulation (EC) No 45/2001.

Consequently, the personal data included in the requested decision (including in its annex) must be withheld under the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001, as there is no need to publicly disclose them and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

The fact that Article 4(1)(b) of Regulation (EC) No 1049/2001 is an absolute exception which does not require the institution to balance the exception defined therein against a possible public interest in disclosure, only reinforces this conclusion.

Should you disagree with the above assessment, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to introduce a confirmatory application requesting the Commission to review this position. Such a confirmatory application

⁷ Idem, paragraphs 77 to 78.

⁸ Judgment of 16 July 2015, *ClientEarth and PAN Europe v European Food Safety Authority*, C-615/13 P, EU:C:2015:489, paragraph 47.

⁹ Judgment of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 106.

should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the European Commission at the following address:

European Commission
Secretariat-General
Transparency unit SG-B4
BERL 5/340
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu.

Yours sincerely,



Pascal Leardini

Enclosure (1): Redacted document SEC(2018)381.