



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES
Space Policy, Copernicus and Defence
Defence 2

Brussels, 21/12/2018
EV/mnf/
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*By registered letter with
acknowledgment of receipt*

Mr Bram Vranken
Vredesactie
Patriottenstraat 27
2600 Berchem

Subject: Your application for access to documents – Ref GestDem No 2018/4049

Dear Mr Vranken,

We refer to your e-mail dated 23.07.2018 in which you make a request for access to documents, registered on 25.07.2018 under the reference number mentioned in the subject line.

A. You request access to:

All documents related to meetings (including but not limited to minutes, preparatory documents, briefings) between officials of DG Grow (including the Commissioner and the Cabinet) and representatives of individual companies, including lobby consultancies and law firms, and/or industry associations, in which the Preparatory Action on Defence Research (PADR) were dealt with since January 2015.

B. Upon our request for further clarification we received your e-mail dated 07.08.2018 which states

- (1) The current request tries to broaden Gestdem 2017/0904 by asking for all documents which are related to meetings between:
 - 1) Industry representatives (including lobby consultancies and law firms, and/or industry associations) and DG Growth officials;
 - 2) On the subject of the Preparatory Action on Defence Research;
 - 3) Since January 2015.
- (2) These documents include, but are not limited to internal briefings, correspondence, minutes, preparatory documents and other reports related to those meetings;
- (3) The request does not cover already disclosed documents under Gestdem 2017/0904. Additionally, to the extent that this request covers the same scope as Gestdem 2018/2431 and Gestdem 2017/7037, these documents may also be excluded from the current request.

We consider the scope of your request as clarified in your reply to our clarification request. We interpreted the three conditions under B(1) as cumulative.

We consider your request to cover documents held up to the date of your initial application, i.e., 23.07.2018.

We have identified 13 documents that match the scope of your request. The list of these documents is in annex (Annex 1 – Document register (Excel format)). This list specifies all documents related to your request, which we could identify.

For these documents you have been granted full or partial access which amount to a total of 18 files, consisting of the identified attachments in each document, which you receive. These files contain for the most part either minutes, briefings, speeches, or invitations. Please note that parts of the documents identified also contain content out of scope that has been redacted.

It should be furthermore noted that in document 13, the comment on the Preparatory Action on Defence Research is solely the opinion of the interlocutor and not the opinion of the Commission.

Please refer to Annex 2 – Released documents (ZIP format).

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Attachments in documents 1 and 7 originate from third parties. Please note that the documents received from third parties are disclosed for information only and cannot be re-used without the agreement of the originators, who hold a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

The documents to which you have requested access contain personal data.

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EC) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC² ('Regulation 2018/1725').

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of

¹ See the Decision of the Commission of 12 December 2011 (2011/833/EU), OJ L 330/39 of 14 December 2011 for details; this Decision does not apply to documents for which third parties hold the copyrights, Article 2 (2) (b).

² Official Journal L 205 of 21.11.2018, p. 39.

Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.³

Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.⁴

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

⁴ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

⁵ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

⁶ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

As to the handwritten signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Sylvia Kainz-Huber

Head of Unit

Annex 1: Document register (xls format)

Annex 2: Released documents (ZIP format)