



## EUROPEAN COMMISSION

LEGAL SERVICE  
The Director General

Brussels, 5<sup>th</sup> April 2019

**By email**

Mr. Nicholas Haagensen  
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**Subject: Request for access to documents**

Ref.: Your request of 7 February 2019 registered under reference GestDem 2019/0756.

Dear Mr. Haagensen,

I refer to your request for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>. Your request concerns: “*The legal submissions of the parties and interveners/observers in the Joined Cases C-105/15 P to C-109/15 P (Mallis & Malli)*”<sup>2</sup>.

### **1. IDENTIFICATION OF THE DOCUMENTS**

The written observations submitted by the following parties have been identified in response to your request:

#### **Case C-105/15P, *Mallis and Malli v Commission and ECB***

1. Konstantinos Mallis and Elli Konstantinou Malli;
2. The European Commission;
3. The European Central Bank;

#### **Case C-106/15P, *Tameio Pronoias Prosopikou Trapezis Kyprou v Commission and ECB***

4. Tameio PronCoias Prosopikou Trapezis Kyprou;
5. The European Commission;
6. The European Central Bank;

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<sup>1</sup> Official Journal L 145, 31.05.2001, page 43.

<sup>2</sup> Judgment of the Court of Justice of 20 September 2016, ECLI:EU:C:2016:702.

**Case C-107/15P, *Chatzithoma v Commission and ECB***

7. Elenitsa Chatzithoma and Petros Chatzithoma;
8. The European Commission;
9. The European Central Bank;

**Case C-108/15P, *Chatziioannou v Commission and ECB***

10. Lella Chatziioannou;
11. The European Commission;
12. The European Central Bank;

**Case C-109/15P, *Chatziioannou v Commission and ECB***

13. Marinos Nikolaou;
14. The European Commission;
15. The European Central Bank.

**2. WRITTEN OBSERVATIONS SUBMITTED BY THE EUROPEAN COMMISSION**

With regards to the Commission's observations, and after a concrete assessment of the requested documents, I am pleased to inform you that access can be granted.

As requested in your email of 12 February 2019, please find enclosed the French translation of the documents under numbers 2, 5, 8, 11 and 14, Greek having been the language of the proceedings.

You may reuse the disclosed documents free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

**3. WRITTEN OBSERVATIONS SUBMITTED BY OTHER PARTIES**

As far as the written observations submitted by the other parties are concerned, in accordance with article 4(4) of Regulation (EC) 1049/2001, the European Commission has consulted the authors of the respective documents on their disclosure.

Thus, I would like to inform you that:

- the European Central Bank has agreed to the disclosure of its written observations (documents under numbers 3, 6, 9, 12 and 15) with the exception of the handwritten signatures on the last page of the documents concerned;
- the applicants, all represented by the Law Firm Efstathiou Constantinos & Efstathiou Efstathios, have also agreed to the disclosure of their written observations (documents under numbers 1, 4, 7, 10 and 13). These documents can therefore be disclosed, with the exception of the emails of the lawyers in the first page of each document, their initials on every page and their handwritten signatures on the last three pages of each document. Furthermore, the initials of the Court's official on the first pages of these documents have been expunged.

Accordingly, you will find enclosed a copy of the concerned documents expunged of personal data. This information must be protected under the exception provided for in Article 4 (1)(b) of Regulation (EC) 1049/2001 ("*protection of personal data*")<sup>3</sup>, in accordance with the European Union legislation regarding the protection of personal data, as explained below.

Please note that these documents were transmitted by the Court of Justice to the Commission in its capacity as participant to the Court proceedings. Access to them is granted for information only and they cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

#### **4. REFUSAL OF PERSONAL DATA**

As stated in point 3 above, some personal data have been blanked out in documents originating from the European Central Bank and from the applicants since this information is covered by the exception provided for in Article 4 (1)(b) of Regulation (EC) 1049/2001, in accordance with the European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) 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/EC<sup>4</sup> ('Regulation 2018/1725').

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 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.<sup>5</sup>

In its judgment in Case C-28/08P (*Bavarian Lager*)<sup>6</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable<sup>7</sup>. Furthermore, in its judgment in Case C-465/00 the Court has recognized that "*there is no reason of principle to justify excluding activities of a professional nature [...] from the notion of private life*"<sup>8</sup>. On this basis, the refused information concerning the lawyers representing the applicants constitutes personal data in

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<sup>3</sup> "The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".

<sup>4</sup> Official Journal L 205 of 21.11.2018, page 39.

<sup>5</sup> Judgment of the Court of Justice of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

<sup>6</sup> 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.

<sup>7</sup> *Bavarian Lager* judgment, paragraph 63. 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.

<sup>8</sup> Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

the meaning of Article 3(1) of Regulation 2018/1725. With regard to the officials of the institutions' personal data, the General Court has confirmed in its judgment of 19 September 2018 that the information such as names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution fall within the notion of "*private life*" regardless of whether this data is registered in the context of a professional activity. Therefore, the refused information constitutes also personal data in the meaning of Article 3(1) of that Regulation<sup>9</sup>.

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 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 that 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 (EC) No 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.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

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<sup>9</sup> Judgment of 19 September 2018 in case *Chambre de commerce and d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, T-39/17, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

## 5. MEANS OF REDRESS

Should you wish the position regarding the refusal of personal data to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the address below.

European Commission

Secretary-General

Transparency, Document Management & Access to Documents (SG.C.1)

BERL 5/282

B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

The Secretary General will inform you of the result of this review within 15 working days from the date of registration of your request. You will either be given access or your request will be rejected in which case you will be informed of how you can take further action.

Yours sincerely,



Luis ROMERO REQUENA

Attachments: 15

