



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY
Food and feed safety, innovation
E1 – Food information and composition, food waste
Head of Unit

Brussels,
SANTE.DDG2.E.1/AR/ld (2020)328989

Dear Mr Abbagnano,

Subject: Your application for access to documents – Ref GestDem No 2019/6939

We refer to your email dated 28 November 2019 in which you make a request for access to documents, registered on the same date under the above-mentioned reference number.

We also refer to our letter of 10 December 2019 extending the time- limit to respond to your request in accordance with Article 7(3) of Regulation (EC) No 1049/2001.

1. Scope of your request

On the basis of Regulation (EC) No 1049/2001¹, you request access to:

[Part 1] Meetings, agenda and minutes of the Advisory Group on the Food Chain and Animal and Plant Health discussing the DG SANCO's consultative document "Labelling: competitiveness, consumer information and better regulation" launched on 13 March 2006.

[Part 2] Meetings, agenda and minutes of the Inter-Service Steering Group on the Impact Assessment of the general Food Labelling and nutrition labelling revision. (Meeting held on: 10 January 2007, 27 March 2007 and 18 June 2007)

2. Identification and assessment of the relevant documents

We have identified one document related to Part 1 of your request and five documents related to Part 2 of your request.

¹ Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Mr Cristiano Abbagnano

By e-mail only: ask+request-7484-bad039b1@asktheeu.org

You will also find enclosed a table (Annex 1) listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001.

Having examined these documents under the provisions of Article 4 of Regulation (EC) No 1049/2001 we have come to the conclusion that documents n° 1 and 2 (in Annex I) can be fully disclosed, and that documents n° 3, 4, 5 and 6 (in Annex I) can be partially disclosed as parts of them fall under the scope of an exception to the right of access to documents laid down in the above-mentioned article.

We enclose a copy of the requested documents.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, 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. Reasons for partial disclosure

Article 4(1)(b) of Regulation (EC) No 1049/2001 – Protection of privacy and the integrity of the individual.

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 EU legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) 2018/1725².

The documents to which you request access contain personal data, in particular names of Commission and non-Commission staff.

Indeed, Article 3(1) of Regulation (EU) 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 data³.

In its judgment in Case C-28/08 P (Bavarian Lager)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵.

² 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.

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, ECLI:EU:C:2017:994, paragraphs 33 to 35.

⁴ 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.

⁵ 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.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if the 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 (EU) 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation (EU) 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.

Consequently, we 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.

In accordance with the exceptions mentioned under this section , partial access is granted to documents n° 3, 4, 5 and 6 (in Annex I).

4. Means of redress

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

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

Yours sincerely,

(e-signed)

Alexandra NIKOLAKOPOULOU

Enclosures: Annex I – list of documents
Documents as identified under section two of this letter (sent by
email only)