



## EUROPEAN COMMISSION

Secretariat-General

Directorate C – Transparency, Efficiency & Resources

**The Director**

Brussels  
SG.C.1/TB/rc -

*By registered mail with AR*

Mr Arun Dohle  
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**Subject: Your application for access to documents – GESTDEM 2020/5116**

Dear Mr Dohle,

I refer to your e-mail of 21 August 2020, registered on 28 August 2020, in which you make a request for access to documents, under the above-mentioned reference number.

### **1. SCOPE OF YOUR REQUEST**

You request access to, I quote:

‘[l]etter signed by President Delors addressed to Mr. Francois de Combret, dated 29 March 1993, in which the following messages was passed: *”une opération d’adoption internationale de l’envergure envisagée, risque d’être rejetée par la Roumanie comme étant incompatible avec sa dignité”*, as well as the letter of Mr. de Combret to which the above letter was a reply’.

### **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001**

The Secretariat-General of the European Commission has identified the following documents as falling under the scope of your request:

- A letter addressed by the organisation ‘Solidarité Enfants Roumains Abandonnés’ (hereafter SERA) to Mr Jacques Delors, dated 17 May 1993, reference 084372 (hereafter ‘document 1’); and

- A letter addressed by Mr. Jacques Delors to SERA, dated 29 July 1993, reference D.3480 (hereafter ‘document 2’; document 1 and document 2 together hereafter the ‘requested documents’).

I can inform you that wide partial access is granted to the requested documents, subject only to the redaction of personal data based on the exception in point (b) of Article 4(1) of Regulation (EC) No 1049/2001 (protection of personal data), for the reasons set out below.

### **2.1. Consultation of a third party’s apparent legal successor**

Document 1 originated from SERA, an author who is to be considered as a third party. Unless it is clear that the document should or not be disclosed, the European Commission is obliged to consult third party authors under Article 4(4) of Regulation (EC) No 1049/2001 with a view to assessing whether, in their opinion:

- any further exceptions in paragraphs 1 or 2 of Article 4 of Regulation (EC) No 1049/2001 are applicable in addition to those mentioned in the last paragraph of point 2 above;
- and if yes, which part(s) of the requested document should be redacted in addition to those already proposed by the European Commission further to the application of the exceptions mentioned in the last paragraph of point 2 above.

According to information available on the Internet, the Commission learnt that organisation SERA had merged with another legal entity. The Commission has sought this latter legal entity in order to clarify whether it should indeed be considered as the legal successor of SERA. However, this legal entity failed to respond to the Commission’s clarification request, despite having received a reminder. Therefore, the Commission concluded that neither the application of further exceptions in paragraphs 1 or 2 of Article 4 of Regulation (EC) No 1049/2001, nor the redaction of additional parts of the requested document are necessary.

### **2.2. Protection of the privacy and the integrity of the individual**

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 the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data’.

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>1</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, 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

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<sup>1</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as ‘*European Commission v The Bavarian Lager* judgment’) C-28/08 P, EU:C:2010:378, paragraph 59.

Community institutions and bodies and on the free movement of such data<sup>2</sup> (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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>3</sup> (hereafter ‘Regulation (EU) 2018/1725’).

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’.<sup>4</sup>

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.<sup>5</sup>

The requested documents contain personal data such as the name and the address of a person who do not form part of the senior management of the European Commission. Moreover, they contain handwritten notes and signatures.

The names<sup>6</sup> of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 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 ‘[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’.

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<sup>2</sup> OJ L 8, 12.1.2001, p. 1.

<sup>3</sup> OJ L 295, 21.11.2018, p. 39.

<sup>4</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

<sup>5</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.

<sup>6</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

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.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.<sup>7</sup> This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 for access to documents, 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 subjects' legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to presume that the legitimate interests of the data subjects concerned would be prejudiced by the 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.

As to the handwritten notes and signatures appearing in the requested documents there is a risk that their disclosure would prejudice the legitimate interest of the person concerned.

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 the disclosure of the personal data concerned.

### **3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

Please note that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

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<sup>7</sup> Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

#### **4. PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have granted wide partial access to the documents requested.

However, for the reasons explained above, no wider partial access is possible without undermining the interests described above.

#### **5. MEANS OF REDRESS**

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled 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 Secretariat-General of the Commission at the following address:

European Commission  
Secretariat-General  
Unit C.1. 'Transparency, Document Management and Access to Documents'  
BERL 7/076  
B-1049 Brussels,

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

Yours faithfully,

Tatjana Verrier  
Director

Enclosures: 2