



EUROPEAN COMMISSION

LEGAL SERVICE  
The Director General

Brussels, 15 February 2021

**By e-mail**

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**Subject: Request for access to documents**

Ref.: Your request of 20 January 2021, registered on 21 January 2021 under reference GestDem 2021/0379

Dear Mr Logue,

I refer to your above-referenced application, under Regulation (EC) No 1049/2001 regarding public access to documents,<sup>1</sup> by which you request a copy of “*all observations submitted (by all parties and interveners) in Case C-619/19 – Land Baden-Württemberg*”<sup>2</sup>.

**1. IDENTIFICATION OF THE DOCUMENTS**

The written observations submitted by the following parties have been identified as matching the terms of your request:

1. Commission;
2. Ireland;
3. The United Kingdom.

**2. WRITTEN OBSERVATIONS SUBMITTED BY THE COMMISSION (DOCUMENT 1)**

After a concrete assessment of the Commission’s written observations, I am pleased to inform you that full access can be granted, under Regulation (EC) No 1049/2001. Accordingly, please find enclosed a copy of the French version<sup>3</sup> of the Commission’s written observations requested.

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<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.05.2001, page 43).

<sup>2</sup> Judgment of the Court of Justice of 20 January 2021, Case C-619/19, *Land Baden-Württemberg v D.R.*, ECLI:EU:C:2021:35.

<sup>3</sup> German was the language of the proceedings.

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### **3. WRITTEN OBSERVATIONS SUBMITTED BY THE THIRD PARTIES (DOCUMENTS 2 AND 3)**

As far as the written observations of the other parties are concerned, the Commission has consulted the authors of the respective documents on their disclosure, in accordance with Article 4(4) of Regulation (EC) No 1049/2001. Following these consultations, I would like to inform you that:

- the lawyers acting on behalf of the Government of Ireland have agreed to the disclosure of their written observations (documents 2);
- the lawyers acting on behalf of the Government of the United Kingdom have not replied to the Commission's consultation (document 3).

Regarding the document for which the Commission has not received a reply (document 3), I would like to inform you that access can be granted in accordance with Regulation (EC) No 1049/2001.

In fact, the Court of Justice has recognised in its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P that, in cases where the proceedings have been closed by a decision of the Court there are no longer grounds for presuming that disclosure of the pleadings would undermine those proceedings.<sup>4</sup>

Since Case C-619/19 is now closed, and in the absence of an objection from the lawyers acting on behalf of the party, I conclude that access can also be granted to the relevant documents in accordance with Regulation (EC) No 1049/2001.

Please note that some personal data has been deleted, in accordance with Article 4 (1)(b) of Regulation (EC) No 1049/2001, as explained in point 4 below.

Accordingly, you will find enclosed a copy of the original versions of documents 2 and 3 in English, expunged of personal data.

The disclosed documents were transmitted by the Court of Justice to the Commission in its capacity as participant in the court proceedings. Access to them is granted for information only and they cannot be re-used without the agreement of the originators, who may hold the copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

### **4. PROTECTION OF PERSONAL DATA (DOCUMENTS 2 AND 3)**

As stated above, some personal data has been redacted in the disclosed documents *i.e.* the contact details of the lawyers representing Ireland and the United Kingdom in documents 2 and 3, as well as the office number and handwritten signature of the lawyer representing the United Kingdom in document 3.

According to Article 4(1)(b) of Regulation (EC) No 1049/2001 "*[t]he 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*".

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<sup>4</sup> Judgment of the Court of Justice of 21 September 2010, Joined Cases C-514/07P, C-528/07P and C-532/07P, *Sweden and Others v API and Commission*, ECLI:EU:C:2010:541, paragraphs 130 and 131.

As the Court of Justice has ruled, when access to documents is requested containing personal data, the Data Protection Regulation, i.e. Regulation (EU) No 2018/1725<sup>5</sup>, becomes fully applicable.<sup>6</sup>

Article 3(1) of Regulation (EU) No 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>7</sup>

Furthermore, in its judgment in Joined Cases C-465/00, C-138/01 and C-139/01 the Court has confirmed 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 contact details of the lawyers representing Ireland and the United Kingdom (documents 2 and 3), as well as the office number and handwritten signature of the lawyer representing the United Kingdom (document 3) have been deleted, since it constitutes personal data in the meaning of Article 3(1) of Regulation (EU) No 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) No 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 met and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) No 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation (EU) No 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.

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<sup>5</sup> 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 (OJ L 205 of 21.11.2018, page 39).

<sup>6</sup> Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd*, ECLI:EU:C:2010:378, paragraphs 59 and 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 (EC) 2018/1725.

<sup>7</sup> Judgment of the Court of Justice of 20 December 2017, Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

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

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subject 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 above-mentioned 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.

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.

## **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 Secretariat-General at the following address:

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Brussels

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

Yours sincerely,

(E-signed)

Daniel CALLEJA CRESPO

Attachments: 3