



## EUROPEAN COMMISSION

LEGAL SERVICE  
The Director-General

Brussels, 5<sup>th</sup> May 2021

**By email**

Mr. Patryck Wachowiec  
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**Subject: Request for access to documents**

Ref.: Your request of 5 March 2021 registered on 8 March 2021 under reference GestDem 2021/1302

Dear Mr. Wachowiec,

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> by which you request “*all written submissions of the parties filled in Case C-824/18, A.B. and Others*”.<sup>2</sup>

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

After examination of the files of the Legal Service, the written pleadings submitted by the following parties have been identified as matching the terms of your request:

1. Commission’s observations;
2. Commission’s addendum;
3. Poland’s observations of 18 May 2019;
4. Poland’s observations of 31 October 2019;
5. Krajowa Rada’s observations;
6. Rzecznik Praw’s observations of 21 May 2019;
7. Rzecznik Praw’s observations of 18 October 2019;
8. C.D’s observations;
9. I.J’s observations;
10. A.B’s observations;
11. E.F’s observations;
12. Prokurator Generalny’s observations of 30 May 2019;
13. Prokurator Generalny’s observations of 24 October 2019.

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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 2 March 2021, Case C-824/18, *A.B. and Others v Krajowa Rada Sądownictwa and Others*, ECLI:EU:C:2021:153.

## **2. WRITTEN PLEADINGS SUBMITTED BY THE EUROPEAN COMMISSION (DOCUMENTS 1 AND 2)**

After a concrete assessment of the Commission's written pleadings, I am pleased to inform you that access can be granted to them, under Regulation (EC) No 1049/2001. Accordingly, please find enclosed a copy of documents 1 and 2 in Polish, the language of the proceedings.

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

## **3. WRITTEN PLEADINGS SUBMITTED BY THIRD PARTIES (DOCUMENTS 3 TO 13)**

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.

Concerning A.B's written observations (documents 10), I regret to inform you that the Commission has been unable to contact the authors of the document. Therefore, since there is no means to inform them about the request and the possible disclosure of their document to the public, the European Commission is not in position to treat this part of your request.

With reference to the remaining written submissions requested (documents 3 to 9 and 11 to 13), where consultations in accordance with Regulation (EC) No 1049/2001 were launched, I would like to inform you that:

- the Government of Poland, as well as the lawyers acting on behalf of Krajowa Rada, Rzecznik Praw, C.D, I.J, E.F and Prokurator Generalny (documents 3 to 9 and 11 to 13) agreed to the disclosure of their written observations.

Please note that some personal data contained in documents 5 to 9 and 11 to 13 have been deleted, in accordance with Article 4 (l)(b) of Regulation (EC) No 1049/2001, as explained in *point 4* below.

Accordingly, you will find enclosed a copy of the original version of documents 3 and 4, as well as the redacted version of documents 5 to 9 and 11 to 13 in Polish, the language of the proceedings.

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**

As stated above, some personal data has been redacted in the disclosed documents *i.e.*:

- the name and handwritten signature of the Court's official in documents 5, 6, 8, 9 and 11 to 13;
- the handwritten signatures of the lawyers representing the parties in documents 5 to 9 and 11 to 13;
- the handwritten initials of the lawyers representing Rzecznik Praw and the contact details of the party in documents 6 and 7;
- the name and handwritten signature of the secretary in document 6;
- the name and handwritten signature of the Referent in document 13.

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"*.

As the Court of Justice has ruled, when access to documents is requested containing personal data, the Data Protection Regulation, i.e. Regulation (EU) 2018/1725,<sup>3</sup> becomes fully applicable.<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 [...]"*. 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>

With regard to the personal data such as names, signatures, functions, telephone numbers and other information relating to the institutions officials, the General Court has recognised in its judgment in Case T-39/17 that they fall within the notion of "private life" regardless of whether this data is registered in the context of a professional activity<sup>6</sup> and, therefore, they constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725. Consequently, the name and handwritten signature of the Court's official in documents 5, 6, 8, 9 and 11 to 13, have been redacted.

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>7</sup> On this basis, the handwritten signatures of the lawyers representing the parties (documents 5 to 9 and 11 to 13), the initials of the lawyers and the contact details of the party (documents 6 and 7), the name and handwritten signature of the secretary (document 6), as well as the name and handwritten signature of the Referent (document 13) have been deleted, since it constitutes 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>3</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>4</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>5</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>6</sup> Judgment of the General Court of 19 September 2018, Case T-39/17, *Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

<sup>7</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.

Only if these conditions are met 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 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.

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 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.

## **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 address below:

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 sincerely,

*[signed electronically]*  
Daniel CALLEJA CRESPO

Attachments: 12