



## EUROPEAN COMMISSION

LEGAL SERVICE  
The Director-General

Brussels, 9<sup>th</sup> June 2021

**By e-mail**

Dr. Georg Bieringer  
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**Subject: Request for access to documents**

Ref.: Your request of 14 April 2021 registered under reference GestDem2021/2452

Dear Dr. Bieringer,

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 application concerns access to the request for preliminary ruling from the referring court as well as the submissions of the parties to the proceedings in Case C-521/12, *Briels and Others v Minister van Infrastructuur en Milieu*<sup>2</sup>. By email of 19 April 2021, you have also asked for the Commission's oral statement before the Court of Justice.

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

After examination of the Legal Service's files, the following written submissions have been identified as matching the terms of your request:

1. European Commission's *observations*;
2. the Raad van State's *request for preliminary ruling*;
3. Stichting Reinier van Arkel and Stichting Overlast A2 Vught's *observations* (hereafter "Stichting");
4. the Netherlands Government's *observations*;
5. the United Kingdom Government's *observations*.

Regarding your request for access to the Commission's oral statement, please note that the Legal Service does not hold any document in its files in this respect. Article 2(2) of Regulation No 1049/2001 states that "[T]his Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and its possession, in all areas of activity of the European Union". Consequently, the Legal Service is not in a position to deal with this part of your request.

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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 15 May 2014, ECLI:EU:C:2014:330.

## **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 access can be granted, in accordance with Regulation (EC) No 1049/2001, with the exception of some personal data, as will be explained below.

Accordingly, please find attached a redacted copy of the Dutch original of document 1<sup>3</sup>, as requested.

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## **3. REFERENCE FOR A PRELIMINARY RULING BY THE REFERRING COURT AND WRITTEN OBSERVATIONS BY THIRD PARTIES (DOCUMENTS 2 TO 5)**

As far as the documents 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 Raad van State has informed the Commission that the reference for a preliminary ruling sent to the Court of Justice is publicly available on its website<sup>4</sup> (document 2);
- Stichting as well as the Government of the Netherlands have agreed to the disclosure of their written submissions (documents 3 and 4);
- the United Kingdom Government has not replied to the Commission's consultation (document 5).

With regard to the document for which the Commission did not receive a reply (document 5), 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 recognized 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.

Since Case C-521/12 is now closed, and in the absence of an objection from the United Kingdom Government, I conclude that access can be granted to this document in accordance with Regulation (EC) No 1049/2001.

Accordingly, please find enclosed a redacted copy of the Dutch original<sup>5</sup> of document 3, a copy of the Dutch original of document 4 as well as a redacted Dutch translation of document 5<sup>6</sup>, made by the Court's services. Please note however that some personal data has been deleted in documents 3 and 5 in accordance with Article 4 (1)(b) of Regulation (EC) No 1049/2001, as will be explained below.

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<sup>3</sup> The language of the proceedings.

<sup>4</sup> <https://www.raadvanstate.nl/@87359/201110075-1-r4/>

<sup>5</sup> See footnote 4.

<sup>6</sup> As requested in your email of 19 April 2021. The original is in English.

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 in points 2 and 3 above, some personal data has been redacted in documents 1, 3 and 5, since covered by the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001 ("*protection of personal data*")<sup>7</sup>, in accordance with the European Union legislation regarding the protection of personal data.

The redacted information is the following:

- the initials (first page of document 1) and handwritten signatures (last page of document 1) of the Commission's officials;
- the handwritten signature of the lawyer acting on behalf of Stichting (last page of document 3);
- the name, initials and handwritten signature of the Court's officials (first page of document 3);
- the contact details of the agent acting on behalf of the United Kingdom Government (page 2 of document 5).

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>8</sup> ('Regulation (EU) 2018/1725').

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>9</sup>

In its judgment in Case C-28/08P (*Bavarian Lager*)<sup>10</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>11</sup>.

As regards the personal data of the officials of the institutions, the General Court has confirmed in its judgment in Case T-39/17 that the information such as names, signatures, functions, telephone numbers and other information pertaining to staff members of an institution fall within the notion of

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<sup>7</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>8</sup> Official Journal L 205 of 21.11.2018, page 39.

<sup>9</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>10</sup> Judgment of the Court of Justice of 29 June 2010, Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, ECLI:EU:C:2010:378, paragraph 59.

<sup>11</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 (EU) 2018/1725.

"private life", regardless of whether this data is registered in the context of a professional activity or not. Therefore, the initials and handwritten signature of the Commission's officials (document 1) as well as the name, initials and handwritten signature of the Court's officials (document 3) have been redacted since this information constitutes personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725<sup>12</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>13</sup>. On this basis, the handwritten signature of the lawyer acting on behalf of the Netherlands Government (document 3) and the contact details of the agent acting on behalf of the United Kingdom Government (document 5) have been deleted, since they 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"*.

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 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 by disclosure of the personal data concerned.

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<sup>12</sup> Judgment of General Court of 19 September 2018, Case T-39/17, *Chambre de commerce and d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

<sup>13</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.

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 this position 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

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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

*[signed electronically]*

Daniel CALLEJA CRESPO

Attachments: 4