



EUROPEAN COMMISSION

Brussels, 7.3.2024  
C(2024) 1658 final

Mr Milan Zver

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION NO (EC) 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 – EASE 2023/1995**

Dear Mr Zver,

I am writing in reference to your confirmatory application registered on 16 May 2023, submitted in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

Please accept our apologies for the delay in the handling of your request.

**1. SCOPE OF YOUR REQUEST**

In your initial application of 30 March 2023, handled by Directorate E ‘Citizens, Health, Migration & Security Union’ in the European Commission’s Secretariat-General, you requested access to, I quote,

‘1. [t]he minutes of the meeting between Commissioner Jourová and the President of the Constitutional Court of the Republic of Slovenia, Dr Accetto.

2. All communications between the Commission’s cabinets on Vice-President Jourová’s visit to Slovenia from 1 to 3 March 2023.

3. All communications within the cabinet of Commissioner Jourová on her visit to Slovenia from 1 to 3 March 2023’.

In its initial reply of 5 May 2023, the Secretariat-General identified the following document falling within the scope of your request:

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<sup>1</sup> OJ L 345, 29.12.2001, p. 94.

<sup>2</sup> OJ L 145, 31.5.2001, p. 43.

- report from the mission to Slovenia, reference Ares(2023)1829247 (hereafter ‘document 1’).

The Secretariat-General granted partial access to document 1, noting that the document was drawn up for internal use, it solely reflects the interpretation of the interventions made, and does not set out any official position of the third parties to which the document refers. Therefore, the document does not reflect the position of the Commission and cannot be quoted as such.

In your confirmatory application, you request a separate review of the initial position taken by the Secretariat-General in relation to your request. In particular, you contest the proper identification of all relevant documents and the partial disclosure in respect to the partially released report (document 1).

The arguments that you put forward in support of your request have been taken into account in this assessment and will be addressed in the corresponding sections below.

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

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, the following documents have been identified at confirmatory stage as falling within the scope of your request:

- revised report from the mission to Slovenia, 1 March 2023, reference Ares(2024)882225 (hereafter ‘document 2’);
- briefing country visit (day 1), 1 March 2023, reference VP7/2023/37 (hereafter ‘document 3’); and
- briefing country visit (day 2), 2 March 2023, reference VP7/2023/37 (hereafter ‘document 4’).

Please note that document 2 (revised report from the mission to Slovenia) has been registered at the confirmatory stage, in accordance with the Commission’s rules on document registration, to correct the meeting report that was identified and partially disclosed in the initial decision of 5 May 2023.

Following this review, I can inform you that:

- further partial access is granted to document 1, subject only to the redaction of personal data based on Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001;

- partial access is granted to documents 2 and 4 based on Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001; and
- partial access is granted to document 3, subject to the redaction of limited parts based on Article 4(1)(b) (protection of privacy and the integrity of the individual) and the second indent (protection of the decision-making process) of Article 4(3) of Regulation (EC) No 1049/2001.

As indicated in the initial reply of the Secretariat-General with respect to document 1, the above-referred documents were drawn up for internal use under the responsibility of the relevant services of the Commission. They solely reflect the author's interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. The documents do not reflect the position of the Commission and cannot be quoted as such.

The detailed reasons underpinning this assessment are set out below.

## **2.1. Protection of 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>3</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 Community institutions and bodies and on the free movement of such data<sup>4</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>5</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.

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<sup>3</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.

<sup>4</sup> OJ L 8, 12.1.2001, p. 1.

<sup>5</sup> OJ L 295, 21.11.2018, p. 39.

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>6</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>7</sup>.

Documents 1-4 contain personal data such as the names, surnames and CVs of individuals who are not public figures acting in their public capacity. They also contain personal data such as the names and surnames of persons who do not form part of the senior management of the Commission. The names<sup>8</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.

Documents 3 and 4 contain the CVs of public figures acting in their public capacity. These CVs are hereby disclosed as they are also published in official websites and thus already publicly available<sup>9</sup>.

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 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>10</sup>.

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<sup>6</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

<sup>7</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>8</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

<sup>9</sup> <https://www.us-rs.si/sodnik/prof-dr-matej-accetto/?lang=en>.  
[https://www.dz-rs.si/wps/portal/en/Home/pos/Deputies!/ut/p/z1/04\\_Sj9CPykssy0xPLMnMz0vMAfjjo8zivSy9Hb283Q0N3I2CTA0CXYycfIMNjA2cvc30w8EKnpPyCTD3BCrycTAWCjf19nYLMgww9jEz1o4jRb4ADOB0Qpx-Pgij8xhfkhoaGOioqAgAhP6Zg/dz/d5/L2dBISEvZ0FBIS9nQSEh/](https://www.dz-rs.si/wps/portal/en/Home/pos/Deputies!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfjjo8zivSy9Hb283Q0N3I2CTA0CXYycfIMNjA2cvc30w8EKnpPyCTD3BCrycTAWCjf19nYLMgww9jEz1o4jRb4ADOB0Qpx-Pgij8xhfkhoaGOioqAgAhP6Zg/dz/d5/L2dBISEvZ0FBIS9nQSEh/).

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 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 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 confirmatory application, 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 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 assume 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.

Consequently, the Secretariat-General concludes 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.

## **2.2. Protection of the decision-making process**

The second subparagraph Article 4(3) of Regulation (EC) No 1049/2001 provides that 'access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

Document 3 consists of a briefing prepared by the Commission services ahead of the second day of the visit of the Vice-President to Slovenia. One redacted sentence on page 8 of document 3 contains opinions from the services of the Commission, as part of the internal consultations within the institution. As explained above, the document was drawn up for internal use under the responsibility of the relevant services of the Commission and does not reflect the actual interventions made during the meetings.

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<sup>10</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.

The limited redacted part in document 3 has to be considered as containing opinions for internal use, as part of deliberations and preliminary consultations within the institution in the sense of the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

The disclosure of this internal opinion is likely to seriously undermine the decision-making process concerned, as it would deter staff members of the Commission from putting forward their views on this and other related matters in an open and independent way and without being unduly influenced by the prospect of disclosure. Indeed, the staff of the services concerned would become more wary of providing frank and open advice to the Members of the College of Commissioners and share their views openly if they knew that their opinions would be released to the public.

As the General Court has held, ‘the possibility of expressing views independently within an institution helps to encourage internal discussions with a view to improving the functioning of that institution and contributing to the smooth running of the decision-making process’<sup>11</sup>.

Please note that it is not possible to give more detailed reasons justifying the need for confidentiality of the redacted sentence in page 8 of document 3 without disclosing the opinion of the persons concerned and, thereby, depriving the exception of its very purpose<sup>12</sup>.

Therefore, full disclosure of document 3 would jeopardise the decision-making process in the meaning of the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 and the relevant redacted part must be protected on that basis.

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

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

According to the case-law, the applicant must, on the one hand, demonstrate the existence of a public interest likely to prevail over the reasons justifying the refusal of access to the documents concerned and, on the other hand, demonstrate precisely in what way disclosure of the documents would contribute to assuring protection of that public interest to the extent that the principle of transparency takes precedence over the protection of the interests which motivated the refusal<sup>13</sup>.

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<sup>11</sup> Judgment of the General Court of 15 September 2016, *Phillip Morris v Commission*, T-18/15, EU:T:2016:487, paragraph 87.

<sup>12</sup> Please see in this respect: Judgment of the General Court of 24 May 2011, *NLG v Commission*, T-109/05 and T-444/05, EU:T:2011:235, paragraph 82. See also Judgment of the General Court of 8 February 2018, *Pagkyprios organismos ageladotrofon v Commission*, T-74/16, EU:T:2018:75, paragraph 71.

<sup>13</sup> Judgment of the General Court of 9 October 2018, *Anikó Pint v European Commission*, ECLI:EU:T:2018:662, paragraph 48; Judgment of the General Court of 23 January 2017, *Association Justice & Environment, z.s v European Commission*, EU:T:2017:18, paragraph 53; Judgment of the

In your confirmatory application, you argue that the initial reply does not provide an explanation for the redaction of parts of document 1. You consider that the redaction of this information undermines the right of the public to access information. You state that, I quote, '[t]he public has a legitimate interest in understanding the details and discussions that took place during these interactions, especially given the potential implications for Slovenia's government RTV act and the perception of Vice-President Jourová's mission as an attempt to influence the Constitutional Court's decision'.

Please note that such general considerations, such as a need for transparency and openness, cannot provide an appropriate basis for establishing that the principle of transparency was in this case especially pressing and capable, therefore, of prevailing character over the reasons justifying the refusal to disclose the documents in question<sup>14</sup>. They do not establish sufficiently how, in the present case, the public interest in transparency of the relations with relevant actors in a Member State is particularly compelling so as to prevail over the reasons justifying the refusal of the limited redacted part of document 3, as set out in Section 2.2 above.

In any event, any public interest has, in the view of the Secretariat-General, been fulfilled by the wide partial access to the documents which is herewith granted. The fact that the document concerned does not relate to a legislative act, for which the Court of Justice has acknowledged the existence of a need for wider openness<sup>15</sup>, provides further support to this conclusion.

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.

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

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, the Secretariat-General has considered the possibility of granting partial access to the documents requested.

As mentioned above, (further) partial access is herewith granted to documents 1-4 with limited parts protected based on Article 4(1)(b) (protection of privacy and the integrity of the individual) (documents 1, 2 and 4) and Article 4(1)(b) and the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 (document 3). However, for the reasons explained above, no broader partial access is possible without undermining the protection of the privacy and integrity of the persons referred to above.

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General Court of 5 December 2018, *Falcon Technologies International LLC v European Commission*, T-875/16, EU:T:2018:877, paragraph 84.

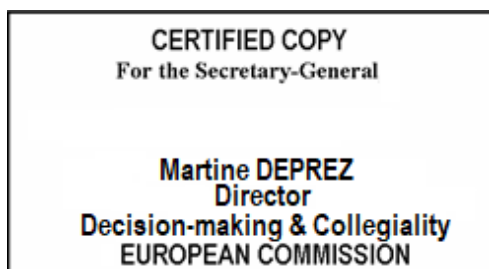
<sup>14</sup> Judgment of the Court of Justice of 14 November 2013, *Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission*, Joined Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 93.

<sup>15</sup> Judgment of 28 June 2010, *Commission v Technische Glaswerke Ilmenau GmbH*, C-139/07 P, EU:C:2010:376, paragraphs 53-55 and 60.

## 5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission*  
*Ilze JUHANSONE*  
*Secretary-General*

Enclosures: (4)