



EUROPEAN COMMISSION

Brussels, 7.12.2023  
C(2023) 8810 final

Mr Arun Dohle

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

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 – 2023/4646**

Dear Mr Dohle,

I am writing in reference to your confirmatory application registered on 23 August 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 replying to your request.

**1. SCOPE OF YOUR REQUEST**

In your initial application of 3 August 2023, attributed to the Directorate-General for Human Resources and Security, you requested access to ‘the CV – [Director of Investigation and Disciplinary Office of the Commission (IDOC)], containing a timeline of responsibilities. From 1986 until today’.

In its initial reply of 22 August 2023, the Directorate-General for Human Resources and Security refused to handle your request, based on the exceptions of Article 4(1)(b) (protection of privacy and integrity of a natural person) of Regulation (EC) No 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725, as your request was formulated in relation to an identified, or identifiable, natural person.

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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.

In your confirmatory application, you request a review of this position. You underpin your request with detailed arguments, which I will address 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 document has been identified at confirmatory stage as falling within the scope of your request:

- CV of the Director of IDOC (hereafter ‘document 1’).

Following the review, I can inform you that full access is granted, for the reasons below.

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.

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

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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.

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>.

Document 1 is a CV and contains exclusively personal data such as name, email, work history, and educational background.

The name<sup>8</sup> of the person 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’.

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>9</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,

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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> 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.

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 consider that there is a necessity in the public interest to obtain access to these personal data. You refer to an email received from the Director of IDOC as a reply to emails you sent to the President of the Commission about, I quote, ‘the recognition of [yourself] as director of Against Child Trafficking as a whistleblower and repair of the financial damages done that were the result of the European Commission's decision to outsource [your collaborator] by a paid secondment to Against Child Trafficking (ACT), in the interest of the service.’ You also mention that you have found an open letter addressed to the European Anti-Fraud Office whereby the signatories make allegations against the now-Director of IDOC. Considering the importance of the Director’s involvement in the treatment of an EU whistle-blower, you consider the publication of the CV of this Director a necessity and in the public interest.

The Secretariat-General considers the necessity test satisfied, therefore the proportionality test needs to be conducted before any transmission of the personal data.

The provisions of Article 9(1)(b) of Regulation (EU) 2018/1725, currently in force, are more restrictive than those of Article 8(b) of Regulation No 45/2001 in force at the time of the *Psara* judgment, as the current Article 9(1)(b) explicitly further requires the institution to establish that it is proportionate to transmit the personal data after having demonstrably weighed the various competing interests. Thus, the institution is required to examine whether the legitimate interests of the data subject might be prejudiced by the transmission and to determine in that examination whether the applicant’s objective is likely to have this effect<sup>10</sup>.

The Court recognised that the ‘requirement must lead the EU institution or body in receipt of the application to refuse to transfer the personal data if it is found that there is the slightest reason to assume that the data subjects’ legitimate interests would be prejudiced’<sup>11</sup>.

In the case at hand, the Commission services consulted the data subject regarding a possible disclosure of their personal data, to which the data subject did not raise any objection.

Taking into account the fact that the data subject is a Director at the Commission and therefore part of senior management for whom the Commission usually applies a greater level of transparency and the absence of objection from the data subject on the disclosure of their personal data in the document concerned, the Secretariat-General concludes that there is no reason to assume that the data subject’s legitimate interests might be

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<sup>10</sup> See judgment of the General Court of 15 July 2015, *Dennekamp v Parliament*, T-115/13, EU:T:2015:497, paragraph 54.

<sup>11</sup> *Idem*, paragraph 117.

prejudiced, and that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.

Therefore, the Secretariat-General, when ‘demonstrably weighing the competing interests’, concluded that it is proportionate to transfer the personal data in the case at hand and, thus, the legal requirements of Article 9(1)(b) of Regulation (EU) 2018/1725 are met also for the proportionality element.

### **3. 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: (1)

