



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

The Director-General

Brussels,  
HOME/MP

**By registered letter with acknowledgment  
of receipt**



**Advance copy by email :**



**Subject: Your application for access to documents – Ref GestDem No . 2019/3245**

Dear 

We refer to your e-mail dated 02/06/2019 in which you make a request for access to documents, registered on under the above-mentioned reference number.

First of all, we propose to respond you in advance in English. The letter in German will follow shortly. We apologise for the inconvenience.

You request access to:

- 1) all notifications within the meaning of the first paragraph of Article 8(2) of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement ('the Regulation');
- 2) all analyses within the meaning of Article 8(3) of the Regulation;
- 3) all reports within the meaning of Article 8(4) of the Regulation;
- 4) all examinations within the meaning of Article 8(5) of the Regulation;
- 5) all implementing acts within the meaning of Article 8(6)(a) of the Regulation;
- 6) all delegated acts within the meaning of Article 8(6)(b) of the Regulation;
- 7) all reports within the meaning of Article 8(7) of the Regulation;
- 8) the Commission's report within the meaning of Article 9(2) of the Regulation; if it is not yet available, please would you send any drafts and communications regarding the report.

First at all, please be informed that the provisions of Regulation (EC) No 539/2001 you referred in your application can now be found in Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification)<sup>1</sup>.

**1.** As far as **points 1, 3, 4 and 8** of your request are concerned, we identified 6 documents as relevant for the sake of your request:

- Notification of 31 May 2019 by the Netherlands concerning Albania pursuant to article 8(2) of Regulation (EU) 2018/1806 (Ares(2019)3612382);
- Letter of 5 June 2019 from the Commission to the European Parliament (Ares(2019)3612382);
- Letter of 5 June 2019 from the Commission to the Council (Ares(2019)3612473);
- Letter of 1st of July 2019 from the Commission to the Netherlands with the results of the examination of its notification concerning Albania pursuant to article 8(2) of Regulation (EU) 2018/1806 (Ares(2019)4161698);
- Report dated 20 December 2017 (COM 2017)815) final from the Commission to the European Parliament and the Council, first report under the visa suspension mechanism;
- Report dated 19 December 2018 (COM 2018)856) final from the Commission to the European Parliament and the Council, second report under the visa suspension mechanism.

Having examined these 6 documents and consulted the Member State for the Dutch notification dated 31 May 2019 under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that all of them may be fully or partially (see point 3 of the letter) disclosed. You can find attached the notification and letters.

The first (COM 2017)815 and second report (COM 2018)856) under the visa suspension mechanism were adopted in accordance with the reporting obligations of Article 8(4) of Regulation (EU) 2018/1806. The Commission refers to the information published on DG HOME's website:

[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/20171220\\_first\\_report\\_under\\_suspension\\_mechanism\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/20171220_first_report_under_suspension_mechanism_en.pdf)

[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181219\\_swd-2018-496-report\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181219_swd-2018-496-report_en.pdf)

**2.** As far as **points 2, 5, 6 and 7** of your request for access to documents are concerned, we regret to inform you that the Commission does not hold any documents that would correspond to the description given in your application.

We inform you that the Commission has not conducted any analysis from the date of entry in force of Article 8(3) of Council Regulation of Regulation (EU) 2018/1806. Moreover, the Commission has not taken any implementing or delegated act within 8(6) (a) and (b) of Regulation 2018/1806.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no documents, corresponding to the description given in your application are held by the Commission, the Commission is not in a position to fulfil your request.

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<sup>1</sup> OJ L 303, 28.11.2018, p. 39

3. Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

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/EC2 ('Regulation 2018/1725').

Some of the documents to which you request access contain personal data, in particular contain personal data, in particular contain personal and biometric data, in particular the names, functions and contact details of staff of the Member States authorities.

Indeed, Article 3(1) of Regulation 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>3</sup>

In case the personal data pertain to Commission staff: Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.<sup>4</sup>

In its judgment in Case C-28/08 P (Bavarian Lager)<sup>5</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>6</sup>

Pursuant to Article 9(1)(b) of Regulation 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 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 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,

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<sup>2</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>3</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

<sup>4</sup> Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

<sup>5</sup> Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

<sup>6</sup> 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 2018/1725.

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 subjects 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 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.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review its position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission  
Secretariat-General  
Unit C.1. 'Transparency, Document Management and Access to Documents'  
BERL 7/076  
B-1049 Bruxelles, or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully

  
[e-signed]

Annexes:

- Notification of 31 May 2019 by the Netherlands concerning Albania pursuant to article 8(2) of Regulation (EU) 2018/1806 (Ares(2019)3612382);
- Letter of 5 June 2019 from the Commission to the European Parliament (Ares(2019)3612382);
- Letter of 5 June 2019 from the Commission to the Council (Ares(2019)3612473);
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