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Roberts Zīle
Vice-President of the European Parliament

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REGISTERED LETTER
WITH ACKNOWLEDGEMENT OF RECEIPT

Ms Luisa Izuzquiza
Mr Arne Semsrott
Mr Stefan Wehrmeyer
FragDenStaat | Open Knowledge Foundation Deutschland e.V.
Singerstr. 109
10179 Berlin
Germany

Subject: Your application for public access to documents
Our reference: **A(2021)10718C** (to be quoted in any future correspondence)

Dear Ms Izuzguiza, Mr Semsrott, Mr Wehrmeyer,

On 8 December 2021, the European Parliament registered your application, based on Regulation (EC) No 1049/2001¹, for public access to “allowances granted to Ioannis Lagos” after 7 October 2020, concerning in particular his salary, his subsistence and general expenditure allowances, reimbursements of his travel expenses, language training and IT costs, as well as expenses related to salaries of his accredited and local parliamentary assistants.

On 17 January 2022, you agreed to reduce the scope of your application to documents dated from 7 October 2020 to 7 March 2021 (‘period at issue’).

In its initial decision of 4 February 2022 (‘initial decision’), Parliament refused access to the documents you requested, in accordance with point (b) of Article 4(1) of Regulation (EC) No 1049/2001, read in conjunction with Regulation (EU) 2018/1725².

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

² 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 295, 21.11.2018, p. 39.

Your confirmatory application

On 28 February 2022, the European Parliament received your confirmatory application ('confirmatory application'), asking Parliament to reconsider its initial decision and provide public access to all relevant documents.

In your confirmatory application, you have indicated that, in order to meet the standards of transparency in a democratic society, the public has to dispose of information regarding the actual use of the financial instruments and resources available to Members of the European Parliament, which draw on public funds. You also claim that not all personal data is equally sensitive, that a distinction has to be made between personal data relating to an individual's private life and personal data relating to an individual's professional life, and that the case at hand requires a more inclusive interpretation of the concept of necessity under point (b) of Article 9(1) of Regulation (EU) 2018/1725. Further, you recall that Mr Lagos has been convicted in Greece for serious crimes and sentenced to imprisonment and that it is essential to examine and to understand whether the allowances granted to him contributed directly or indirectly to the funding or perpetuating of criminal or otherwise illegal activity conducted by him. You also argue that Parliament could have granted partial access, removing any data allowing to identify Mr Lagos and his assistants, such as their names and surnames, as well as other sensitive information, such as medical data.

Assessment of your confirmatory application

Pursuant to Rule 122(5) of the Rules of Procedure of the European Parliament and Article 15 of the Decision of the Bureau of the European Parliament on the rules governing public access to European Parliament documents³, I, as Vice-President responsible for matters relating to access to documents, am responding to your confirmatory application on behalf and under the authority of the Bureau do so in light of Regulation (EC) No 1049/2001.

Documents falling within the scope of your request

In light of your confirmatory application, which is limited to the period at issue, Parliament has identified documents under a number of different categories concerning:

- (1) the salary of Mr Lagos;
- (2) his subsistence allowance;
- (3) reimbursement of his travels costs;
- (4) the salaries of his accredited and local parliamentary assistants; and
- (5) reimbursement of travel costs of his accredited and local parliamentary assistants.⁴

You motivate your request essentially by the need to "examine and understand whether the allowances contributed, directly or indirectly, to funding or perpetuating criminal or otherwise illegal activity". Accordingly, you look for information how the money paid to Mr Lagos has been spent.

³ Bureau decision of 28 November 2001 on the rules governing public access to European Parliament documents (OJ C 216, 22.7.2011, p. 19).

⁴ In the context of the -depth investigation following the confirmatory request, no documents relating to language courses or medical costs could be identified.

Please note that Parliament does not control how Members of Parliament and their assistants use their salary and does not, for this reason, hold any documents pertaining to the use of those salaries. Therefore, within categories (1) and (4), Parliament only holds documents indicating the amount of the salary or of elements thereof, such as payment slips, documents indicating the annual indexation, annual income statements or documents concerning bonuses for local assistants.

Please also note that the daily subsistence allowance and the general expenditure allowance are disbursed as lump sums⁵. Hence, Parliament does not hold any documents related to the use of those allowances.

Therefore, with regard to the subsistence allowance for Members (category (2)), Parliament only holds documents indicating the amount of the allowance paid and attendance lists, as well as invoices and supporting documents for costs incurred by Members where their official activity takes place outside the territory of the Union.

Parliament does not hold documents concerning the general expenditure allowance during the period at issue. Indeed, following the completion of a single application at the beginning of a Member's mandate⁶, Parliament no longer processes documents related to the payment of the general expenditure allowance. As to IT costs, please note that local IT costs are covered by the general expenditure allowance and that Parliament does not hold documents indicating the specific IT costs associated with any single Member at Parliament's places of work.

Concerning the reimbursement of travel expenses (categories (3) and (5)), the documents that Parliament holds are requests for the reimbursement of such costs, including supporting documents, as well as Parliament's decisions in the light of such requests.

Exception relating to the protection of privacy and the integrity of the individual

Parliament considers that the refusal of access to documents falling within the categories (1) to (5) is justified by the exception under point (b) of Article 4(1) of Regulation (EC) No 1049/2001, relating to the protection of privacy and the integrity of the individual.

According to this provision, Parliament has to refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data. In connection with that provision, point (b) of Article 9(1) of Regulation (EU) 2018/1725 stipulates that personal data are only to be transmitted to recipients if the following conditions are met: In a first step, the applicant has to establish that it is necessary to have the data transmitted for a specific purpose in the public interest. If such necessity has been established by the applicant, Parliament has to assess, in a second step, whether there is any reason to assume that the data subject's legitimate interests might be prejudiced and, if this is the case, whether it would be proportionate to transmit the personal data for that specific public purpose after having weighed the various competing interests.

As follows from Article 3(1) of Regulation (EU) 2018/1725, any information relating to an identified or identifiable natural person is considered to be personal data.

⁵ See Articles 24 and 25 of the Decision of the Bureau of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament, OJ C 159, 13.7.2009, p. 1.

⁶ In Mr Lagos' case, this took place before the start of the period at issue.

Since documents falling within categories (1) to (5) contain personal data, such as the name and surname of the Member and of his parliamentary assistants, signatures, as well as other personal information such as the precise amount of their salary, the amount of the allowances, as well as information on their travels, stays and attendance to meetings, it is necessary to assess your application in view of the two steps test provided for by point (b) of Article 9(1) of Regulation (EU) 2018/1725.

A) Necessity of the transfer for a specific purpose in the public interest

In your confirmatory application, you claim that, when assessing the necessity of the transfer of personal data, a distinction has to be made between personal data relating to an individual's private life and personal data relating to an individual's professional life and that, with regard to the latter, 'a more inclusive interpretation' of the concept of necessity has to be applied.

As indicated above, Article 9(1) of Regulation 2018/1725 provides for two different steps. While the distinction between personal data relating to an individual's private life and personal data relating to an individual's professional life may become relevant in the context of the second step, during which Parliament has to examine whether data subjects' legitimate interests might be prejudiced and has to weigh the various competing interests,⁷ such distinction is not relevant in the context of the first step, during which the applicant must establish that the transfer of the personal data requested is necessary for a specific purpose in the public interest.

This clearly follows from the wording of point (b) of Article 9(1) of Regulation 2018/1725, according to which the necessity of the transfer has to be established with respect to the transfer of all personal data, as well as the wording of Article 3(1) of that regulation, according to which the notion of personal data encompasses not only data relating to private life, but also data relating to professional life.⁸

As to the opinion of an Advocate General to which you refer in your confirmatory application, please note that such opinions are a mere proposal to the Court. Moreover, in their case-law, the Union courts have not applied different interpretations of the concept of necessity depending of the nature of the personal data concerned,⁹ but have instead relied on only one interpretation, according to which, in order to be necessary for a specific purpose of public interest, the transfer of the personal data in question must be the most appropriate of all possible measures for attaining that purpose.¹⁰

I note that, in your initial and confirmatory requests, you refer to two purposes: One purpose is to contribute to the public's understanding of Parliament's rules concerning the immunity waiver procedure, its understanding of the rights and obligations of Members during that procedure and its understanding of the utilisation of public funds in the context of that procedure, in particular with a view to its future application. Another purpose is to allow for public scrutiny and accountability regarding Mr Lagos' expenses as Member of the European Parliament.

⁷ Judgement of 15 July 2015, *Dennekamp v Parliament*, T-115/13, EU:T:2015:497, paragraph 124.

⁸ Judgment of 25 September 2018, *Psara and Others v European Parliament*, T-639/15, ECLI:EU:T:2018:602, paragraphs 41 to 48.

⁹ Judgements of 15 July 2015, *Dennekamp v Parliament*, T-115/13, EU:T:2015:497, paragraph 50, and of 25 September 2018, *Psara and Others v European Parliament*, T-639/15, ECLI:EU:T:2018:602, paragraphs 41 to 53.

¹⁰ Judgments of 29 June 2010, *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 78, of 15 July 2015, *Dennekamp v Parliament*, T-115/13, EU:T:2015:497, paragraph 54, and of 25 September 2018, *Psara and Others v European Parliament*, T-639/15, ECLI:EU:T:2018:602, paragraph 72.

1) On the contribution to the public's understanding of the rules concerning the waiver of the immunity of Members of Parliament, of their rights during that process and of the utilisation of public funds in that context

One of the purposes on which you base your request is the contribution to the public's understanding of Parliament's rules concerning the immunity waiver procedure, of the rights and obligations of Members during that procedure and of the utilization of public funds in that context.

Your request appears to be based on the premise that the criminal conviction of Mr Lagos, the waiver of his immunity or his imprisonment in Greece have affected his status as Member of the European Parliament or his financial and social entitlements deriving from that status.

However, pursuant to Article 13 of the Electoral Act¹¹, the mandate of a Member of Parliament ends as a result of resignation, death or withdrawal of the mandate. The withdrawal of a mandate has to be provided for by the national law of the Member State where the Member was elected. Since, after his criminal conviction, the waiver of his immunity and his imprisonment, Mr Lagos did not resign, nor was his mandate withdrawn by the Greek electoral authorities, he remained a Member of the European Parliament.

Therefore, as every other Member, Mr Lagos benefitted from the financial and social entitlements deriving from his status as Member of the European Parliament.

Since neither the criminal conviction of Mr Lagos, nor the waiver of his immunity, nor his imprisonment affected his status of Member of the European Parliament, the transfer of the personal data you request cannot be considered as an appropriate measure in view of the purpose to contribute to the public's understanding of the Parliament's rules concerning the immunity waiver procedure, of the rights and obligations Members of Parliament have during that procedure and of how public funds may be used in that context.

In any event, a transfer of the personal data requested would not constitute the most appropriate of all possible measures for attaining this purpose. Indeed, a contribution to the public's understanding of the rules concerning the immunity waiver procedure and of the rights and obligations Members have during that procedure can be better attained on the basis of documents concerning this procedure that are in the public domain, such as Article 9 of Protocol No 7 on the privileges and immunities of the European Union¹², Rule 9 of Parliament's Rules of Procedure¹³, Notice 11/2019 on the principles of immunity cases¹⁴ and the Handbook on the incompatibilities and immunity of the Members of the European Parliament¹⁵. Further, as to the reasons why, according to Greek electoral law, a criminal conviction and the imprisonment of a Member of Parliament elected in Greece does not affect his or her status, Parliament refers to the relevant rules of Greek electoral law

¹¹ Act concerning the election of representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended and renumbered by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 (OJ 2002 L 283, p. 1).

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016M%2FPRO%2F07>.

¹³ https://www.europarl.europa.eu/doceo/document/RULES-9-2021-09-13-RULE-009_EN.html

¹⁴ <https://www.europarl.europa.eu/committees/en/juri/home/publications?tabCode=special-procedures>.

¹⁵ [https://www.europarl.europa.eu/thinktank/de/document/IPOL_STU\(2021\)703875](https://www.europarl.europa.eu/thinktank/de/document/IPOL_STU(2021)703875)

For the aforementioned reasons, Parliament considers that the transfer of the personal data you requested is not necessary with regard to the purpose of contributing to the public's understanding of the Parliament's rules concerning the immunity waiver procedure, of the rights and obligations of Members during that procedure and of the utilization of public funds in that context.

2) On the public scrutiny and accountability of the expenses of Mr Lagos

You also claim that the transfer of the personal data you request is necessary for the public scrutiny and accountability of the expenses of Mr Lagos.

Concerning this purpose, I would like to recall that, according to point (b) of Article 9(1) of Regulation (EU) 2018/1725, the purpose in view of which the transfer of the personal data is requested must be specific and in the public interest.

According to the case-law, as such, the purpose to enable public scrutiny and accountability of the expenses of Members of the European Parliament is not specific enough.¹⁶ Otherwise, Parliament would be obliged, as a matter of principle, to infer from general considerations relating to the public interest in the disclosure of personal data that the necessity for the transfer of those data has, by implication, been established.¹⁷

This conclusion is not called into question by the decisions of the European Ombudsman you refer to in your initial request. To the contrary, in paragraph 10 of her decision in case 221/2021/DL¹⁸, the Ombudsman acknowledges that, in the light of the established case-law, such purpose as you refer to cannot be considered specific enough.

Hence, the objective of public scrutiny and accountability of the expenses of Mr Lagos as Member of Parliament does not constitute a specific purpose in the public interest within the sense point (b) of Article 9(1) of Regulation 2018/1725.

In the event that public scrutiny and accountability of the expenses of Mr Lagos were regarded as specific purposes in the public interest (quod non), Parliament considers that the transfer of the requested personal data could not be considered as necessary in view of these purposes, as it does not constitute the most appropriate measure to achieve them.

In the first place, Parliament would like to recall that a significant amount of information concerning the financial and social entitlements of its Members are already in the public domain.

Indeed, on a site dedicated to the financial and social entitlements of its Members¹⁹, Parliament indicates the amount of the salary of its Members before and after EU tax and insurance contributions, as well as the requirements and lump sums concerning the daily subsistence allowance and the general expenditure allowance. Further, on that site, Parliament indicates the conditions under which and the extent to which ordinary travel expenses (to and from Parliament's places of work or venues for meetings of Parliament's bodies), travel expenses in the Member State of election and travel expenses outside that Member State are reimbursed. Moreover, detailed information concerning staffing arrangements for accredited and local parliamentary assistants are provided on that site.

¹⁶ Judgment of 25 September 2018, *Psara and Others v European Parliament* Psara, paragraphs 73 to 75.

¹⁷ Judgment of 25 September 2018, *Psara and Others v European Parliament* Psara, paragraph 76.

¹⁸ <https://www.ombudsman.europa.eu/en/decision/en/139808>.

¹⁹ <https://www.europarl.europa.eu/meps/en/about#thirdanchor>.

Parliament also provides other information on its website, such as the names of all Members' accredited and local parliamentary assistants, as well as on the paying agent who manages the contracts for the local assistants.²⁰ Further, the names of all attending Members are recorded in the official plenary minutes for each day of session.²¹

In addition, with regard to the financial and social entitlements at issue, Parliament refers to the detailed rules provided for by the Statute for Members of the European Parliament²² and the Implementing Measures for this Statute²³, both of which are in the public domain.

Parliament takes the view that this publication of detailed information on the financial and social entitlements of its Members constitutes a more appropriate measure to attain the purposes of public scrutiny and accountability of the expenses of its Members, including those of Mr Lagos, than the transfer of their personal data.

In the second place, Parliament would like to point out that the procedures establishing Members' financial and social entitlements and the expenses caused by these entitlements are subject to thorough internal controls by Parliament's financial services, by the Internal Auditor and by the parliamentary committee on budgetary control, as well as to external control by the Court of Auditors and by OLAF in the case of alleged fraud. In addition, the Quaestors and Parliament's Bureau review complaints from Members concerning both the administration's interpretation and application of the rules underlying those procedures. Parliament considers that such procedures before public authorities are more appropriate for the scrutiny and accountability of the expenses of Mr Lagos than the public disclosure of his and his parliamentary assistants' personal data.

In the third place, it is not clear from your request how the disclosure of the personal data in question could provide any information relevant to the objective pursued by your request. Again, Parliament does not hold documents providing information about the use made of salaries, general expenditure allowance or daily allowance. Neither would the invoices for travel expenses allow identifying any illegal use. Moreover, Parliament notes that you have not brought forward any argument capable of casting doubt on the proper functioning of the aforementioned measures of control by public authorities. Indeed, as already indicated above, none of the circumstances concerning Mr Lagos that you have mentioned call into question that, like any Member of the European Parliament, he has a right to certain financial and social entitlements under the conditions provided for by the applicable rules. Further, Parliament notes that, while the names of the parliamentary assistants and the paying agent of Mr Lagos are indicated on Parliament's website, you have not brought forward any allegations with regard to those persons. As to your argument according to which Mr Lagos could use his entitlements to evade compliance with a ruling of a Greek court, it suffices to note that this allegation is purely hypothetical, given that Mr Lagos is currently serving his sentence in a Greek prison.

For the aforementioned reasons, Parliament considers that, in any event, you have not established that the most appropriate measure to achieve public scrutiny and accountability of the expenses of Mr Lagos would be the transfer of the requested personal data.

²⁰ https://www.europarl.europa.eu/meps/en/197737/IOANNIS_LAGOS/assistants#detailedcardmep.

²¹ See, for example, the following attendance list, on which the name of Mr Lagos is indicated:
https://www.europarl.europa.eu/doceo/document/PV-9-2021-03-24-ATT_EN.html.

²² Decision 2005/684 of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament, OJ L 262, p. 1.

²³ Decision of the Bureau of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament, OJ C 159, 13.7.2009, p. 1.

B) Prejudice to the legitimate interest in the protection of privacy of Mr Lagos and his assistants

Since the necessity of the transfer of the requested personal data in view of a specific purpose of public interest has not been established, it is not necessary to examine whether legitimate interests of Mr Lagos or his assistants prevail over the interests you refer to.²⁴

On a subsidiary ground, and without prejudice to the fact that you did not establish that the transfer of the personal data requested is necessary, Parliament holds the view that, in any case, it would not be proportionate within the sense of point (b) of Article 9(1) Regulation (EU) 2018/1725, read in the light of paragraph 3 of this Article²⁵ to allow the transfer of the personal data contained in the documents at issue, since the legitimate interests of Mr Lagos and his assistants prevail over the interests you have mentioned.

Concerning Mr Lagos' parliamentary assistants, Parliament would like to point out that they do not hold public office and that there is no element that would justify considering as predominant the interest in the publication of their personal data contained in the documents at issue.

As to Mr Lagos, in the first place, Parliament would like to recall that, according to Article 6 of the Electoral Act and Article 2 of the Statute for Members, Members of Parliament enjoy a free mandate. The freedom of mandate encompasses a Member's freedom to meet whomever he chooses, to participate in meetings, conferences, official business etc., to inform him- or herself in preparation of debates and votes in Parliament. It also encompasses a Member's right to seek assistance, to choose members of staff, to determine their salaries freely and to send them on missions, within the limits set out by the rules.

The protection of a Member's freedom of mandate has to be considered a legitimate interest of the data subject concerned under point (b) of Article 9(1) of Regulation 2018/1725. Members have to remain free as to these choices. However, the public disclosure of the private data contained in the documents at issue would allow to track and profile the Member and his assistants. Indeed, on the basis of the information indicated in documents concerning reimbursement of travels²⁶ and certain documents concerning the subsistence allowance²⁷, a Member's itinerary, attendance to meetings and conferences, place of residence etc. could be traced. Such mapping of a Member's activity would encroach upon the free exercise of his mandate.

In the second place, to the extent to which it relates to a recurrent activity of a Member, the disclosure of such information could also constitute a security risk for the Members concerned.

For the aforementioned reasons, Parliament considers that, in any event, the legitimate interests of Mr Lagos and his assistants prevail over the interests you refer to.

Consequently, Parliament concludes that the conditions for the transfer of personal data concerned under point (b) of Article 9(1) Regulation (EU) 2018/1725 have not been satisfied and that the disclosure of the requested documents, including the confirmation of the existence of documents concerning the reimbursement of medical costs, would therefore undermine the protection of the privacy and the integrity of the individual as provided for in point (b) of Article 4(1) of Regulation (EC) No 1049/2001.

²⁴ Judgment of 25 September 2018, *Psara and Others v European Parliament* Psara, paragraph 97.

²⁵ Article 9(3) of Regulation 2018/1725 provides that Union institutions and bodies shall reconcile the right to the protection of personal data with the right of access to documents in accordance with Union law.

²⁶ See the rules in Articles 10 to 23 of the Implementing Measures for the Statute for Members.

²⁷ See Article 25(3) to (5) of the Implementing Measures for the Statute for Members.

Partial access

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, the parts of a document not covered by any of the exceptions shall be released.

However, the disclosure of a version of the documents requested expunged of all personal data would have deprived such access to those documents of any useful effect in the light of the objectives you pursue. As follows from the case-law, in such a situation, Parliament is under no obligation to grant partial access.²⁸

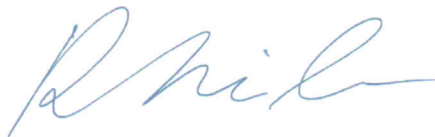
Redacting, as you have suggested, names and surnames from the documents in question, would not ensure an adequate protection of privacy and the integrity of the individual, given that the scope of your application links any identified documents to Mr Lagos and his assistants.

Conclusion

Considering the above, Parliament confirms its initial decision, and, in accordance with point (b) of Article 4(1) of Regulation (EC) No 1049/2001, read in conjunction with Union legislation regarding the protection of personal data, Parliament refuses access to all documents identified in light of your application.

Finally, I would like to draw your attention to the means of redress against this decision according to Article 8 of Regulation (EC) No 1049/2001. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in the Treaty on the Functioning of the European Union.

Yours sincerely,



Roberts ZĪLE

²⁸ Judgment of 25 September 2018, *Psara and Others v European Parliament*, T-639/15, ECLI:EU:T:2018:602, paragraph 126.