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Press and Information

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Judgment of the Court of First Instance in Case T-194/04

The Bavarian Lager Co. Ltd v Commission of the European Communities

**THE COURT OF FIRST INSTANCE ANNULS THE COMMISSION DECISION
REFUSING TO DISCLOSE THE NAMES OF ALL PARTICIPANTS AT A MEETING
IN THE CONTEXT OF PROCEEDINGS FOR FAILURE TO FULFIL OBLIGATIONS**

The right of access to documents containing personal data must be guaranteed if communication of those data does not undermine protection of the privacy and integrity of the person concerned.

A large number of operators of public houses and bars in the United Kingdom were bound by exclusive purchasing contracts requiring them to obtain supplies of beer from certain breweries. As a result, The Bavarian Lager Co. Ltd, an importer of German beer, was not able to sell its product. Taking the view that British legislation did not sufficiently limit those exclusivity contracts, and thus constituted a measure having equivalent effect to a quantitative restriction on imports, the company lodged a complaint with the Commission in 1993.

The Commission decided to bring proceedings against the United Kingdom for failure to fulfil its obligations. On 11 October 1996, a meeting took place attended by representatives of the Commission's Directorate-General for the Internal Market and Financial Services, the United Kingdom Department of Trade and Industry and representatives of the Confederation des Brasseurs du Marche Commun. Bavarian Lager had asked to participate at that meeting, but the Commission had refused.

The United Kingdom amended the legislation in question, and the Commission decided, after the amended legislation came into force on 10 December 1997, to close the proceedings for failure to fulfil obligations.

Following a number of requests by Bavarian Lager based on Community legislation concerning public access to documents¹, the Commission disclosed to it, inter alia, the minutes of the meeting of 11 October 1996, stating that the names of five persons who had attended that

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 2001 L 145, p. 43).

meeting had been blanked out, two of them having expressly objected to disclosure of their identity and the Commission having been unable to contact the three others. Bavarian Lager made a confirmatory request for the full minutes, containing the names of all the participants, which the Commission rejected by a decision of 18 March 2004.

The Commission took the view that Bavarian Lager had not established either an express and legitimate purpose or any need for such disclosure, as was required (so it argued) by the regulation on the protection of personal data,² and that, therefore, the exception concerning the protection of private life, laid down by the regulation on public access to documents, applied. It further took the view that disclosure would compromise its ability to carry out investigations.

Bavarian Lager applied to the Court of First Instance for the annulment of that decision.

The Court found that the list of participants in the minutes contained personal data, since the persons who participated at that meeting could be identified there. However, the mere fact that a document contains such data does not necessarily mean that the privacy or integrity of the persons concerned is affected, even though professional activities are not in principle excluded from the concept of "private life".

The Court held that, in this case, disclosure of names of representatives of a collective body was not capable of actually and specifically affecting protection of the privacy and integrity of the persons concerned. The mere presence of the name of the person concerned in the list of participants at a meeting, under the heading of the body which that person represented, does not have that effect, and the protection of the privacy and integrity of the persons concerned is not compromised.

The Court further held that, since the exception for protection of the privacy and integrity of the persons concerned did not apply, objection by those persons could not prevent disclosure. In those circumstances, Bavarian Lager did not need to prove the need for disclosure of the names.

The Court also examined the objection concerning protection of the objectives of investigations, and found that, even if the need to preserve the anonymity of persons providing information to the Commission concerning possible infringements of Community law constitutes an objective capable of justifying the Commission in not granting full, or even partial, access to certain documents, the fact remains that, in this case, the Commission ruled in the abstract on the effect which disclosure of the document concerned with names might have on its investigative activity. It did not demonstrate that disclosure of that document would actually and specifically undermine protection of the aims of investigations. Therefore, it has not been demonstrated in this case that the objective of investigations was actually and specifically jeopardised by the disclosure of data requested six years after the closure of those investigations.

The Court of First Instance therefore annuls the Commission's decision.

REMINDER: An appeal, limited to questions of law, may be brought before the Court of Justice of the European Communities against the decision of the Court of First Instance, within two months from the date of its notification.

² 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 (OJ 2001 L 8, p. 1).

Unofficial document for media use, which is not binding on the Court of First Instance.

Available languages : DE, EN, FI, FR, SV, NL, IT

The full text of the judgment can be found on the website of the Court of Justice

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-194/04>

It may normally be consulted from 12 hours CET on the day of delivery.

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