



PRESS RELEASE

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Review of relationship between transparency and data protection more urgent after Court ruling on Bavarian Lager

The European Court of Justice has issued its ruling on the so-called "Bavarian Lager" case ^(*), a case that has been closely followed as a key case on the question on how best to reconcile the fundamental right to the protection of personal data with the fundamental right of public access to documents.

The Court of Justice clarified certain key concepts in the Data Protection Regulation ^(**) and interpreted the Access to Documents Regulation ^(***) with regard to the right to privacy and data protection.

The Court confirmed the judgment of the General Court below that surnames and forenames are personal data and that the communication of such data falls within the definition of "processing" for the purposes of the Data Protection Regulation.

However the Court ruled that the requirements of the Data Protection Regulation apply in all circumstances where the right of access to a public document is exercised, whereas the Court below had found that the requirements of that Regulation were only applicable in those situations where the privacy or the integrity of the individual would be infringed, contrary to Article 8 of the European Convention of Human Rights. In the EDPS' view, the ruling shows the importance of the review of the relationship between transparency and data protection in the current revision of the Access to Documents Regulation which is now even more urgent than before.

Peter Hustinx, EDPS, says: "*The judgment of the Court confirms the importance of the review of how to reconcile two fundamental rights: access to documents and data protection in the light of the Lisbon Treaty. We will continue to provide advice to the EU legislator with a view to ensuring the protection of privacy, but also to ensure that this right is exercised within the context of the greatest possible transparency of EU public activities.*"

Background information

The applicant, Director of the Bavarian Lager Company, applied to the Commission for access to documents generated by the Commission in the course of the investigation of a complaint made by the applicant alleging the violation of EU law by a Member State. The Commission granted access to the documents in question, including a meeting report, save for the names of five individuals who had attended the meeting on a confidential basis and who either objected to the disclosure of their names or could not be contacted. The applicant contested the refusal before the General Court.

The Commission argued that it is required, when deciding on requests for access to documents under the Access to Documents Regulation, to respect the requirement of privacy and data protection as laid down in the Data Protection Regulation.

The EDPS intervened in this case in support of the applicant and argued that the Commission took too strict an approach when interpreting both the Access to Documents Regulation and the Data Protection Regulation. According to the EDPS, the harm to privacy should be a necessary threshold to justify refusal of access to documents containing personal details.

The European Court of Justice did not follow the approach suggested by the EDPS as it found that the Commission had rightly refused access to the names of the participants at the meeting who objected to the disclosure. According to the judgment, the applicant should have established the necessity of having the data transferred, which Bavarian Lager did not do.

A proposal to revise the Regulation on access to documents is currently discussed by the European institutions. The EDPS issued an opinion on this proposal in June 2008, with an alternative text for the relevant provision of the Regulation.

(*) Judgment of 29 June 2010 in Case C-28/08 P, Commission v Bavarian Lager

(**) 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).

(***) 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).

For more information, please contact the EDPS Press Service at: press@edps.europa.eu

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