



Press and Information

Court of Justice of the European Union

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Judgment in Case C-28/08 P
Commission v Bavarian Lager

The Court of Justice defines the scope of the protection of personal data in the context of access to documents of the Union institutions

The Access to Documents Regulation¹ provides that Union institutions are to refuse access to a document where disclosure would risk undermining the protection of the private life of the individual, in particular in conformity with the Community legislation on the protection of personal data.

The Data Protection Regulation² states that personal data cannot be transferred to recipients other than Community institutions and organs unless the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority.

The Bavarian Lager company was created with a view to importing German beer in bottles intended principally for public houses in the United Kingdom. However, its product could not be sold easily because most of those establishments were bound by exclusive purchasing contracts requiring them to obtain their beer supplies from certain breweries.

Pursuant to a United Kingdom regulation on the supply of beer, British breweries were required to grant public house managers the possibility of buying a beer from another brewery on condition that it was cask-conditioned. That provision is commonly known as the "Guest Beer Provision" (GBP). However, most beers produced outside the United Kingdom were sold in bottles. Considering that the GBP constituted a measure having equivalent effect to a quantitative restriction on imports, Bavarian Lager lodged a complaint with the Commission.

During the procedure for failure to fulfil obligations brought by the Commission against the United Kingdom, representatives of the Community and British administrations, and of the *Confederation des Brasseurs du Marche Commun* ('CBMC') took part in a meeting held on 11 October 1996. Bavarian Lager sought leave to take part in that meeting, but the Commission refused its request.

Having been informed by the British authorities that the GBP was going to be amended to allow the sale of bottled beer as a guest beer in the same way as cask-conditioned beer, the Commission informed Bavarian Lager that the procedure for failure to fulfil obligations would be suspended. The Commission then decided to take no further action on the matter.

Bavarian Lager made several requests to the Commission for access to documents placed on the file relating to the procedure for failure to fulfil obligations and the names of the participants in the meeting of 11 October 1996. The Commission agreed to disclose certain documents relating to the meeting, but blanked out five names appearing in the minutes, two persons having expressly objected to the disclosure of their identity and the Commission having been unable to contact the three others.

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).

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).

Bavarian Lager then made a fresh application to obtain the full minutes of the meeting of October 1996, stating the names of all the participants. By decision of 18 March 2004, the Commission rejected that application, citing in particular the protection of the private life of those persons, such as guaranteed by the Data Protection Regulation.

Bavarian Lager brought an action before the Court of First Instance seeking annulment of that Commission decision.

By judgment of 8 November 2007³, the Court of First Instance annulled the Commission decision, considering in particular that the mere entry of the names of the persons in question on the list of persons attending a meeting on behalf of the body they represented did not constitute an undermining of private life and did not place the private lives of those persons in any danger.

The Commission, supported by the United Kingdom and the Council, brought an action before the Court of Justice against that judgment of the Court of First Instance.

In its judgment today, the Court of Justice points out that the Access to Documents Regulation establishes as a general rule that the public may have access to documents of the institutions, but lays down exceptions by reason of certain public and private interests.

In particular, its provision laying down an exception to the right of access to a document – in cases where disclosure would undermine the privacy and the integrity of the individual -- establishes a specific and reinforced system of protection of a person whose personal data could, in certain cases, be communicated to the public.

Where a request based on the Access to Documents Regulation thus seeks to obtain access to documents including personal data, the provisions of the Data Protection Regulation become applicable in their entirety, including the provision requiring the recipient of personal data to establish the need for their disclosure and the provision which confers on the data subject the right to object at any time, on compelling legitimate grounds relating to his or her particular situation, to the processing of data relating to him or her.

The Court of Justice then holds that the Court of First Instance was right to conclude that the list of participants in the meeting of 11 October 1996 appearing in the minutes of that meeting contains personal data, since the persons who participated in that meeting can be identified.

After pointing out that Bavarian Lager was able to have access to all the information concerning the meeting of 11 October 1996, including the opinions which those contributing expressed in their professional capacity, the Court of Justice examines the question whether the Commission could grant access to the document containing the five names of participants at that meeting, and arrives at the conclusion that the Commission was right to verify whether the data subjects had given their consent to the disclosure of personal data concerning them.

In the absence of the consent of the five participants at the meeting of October 1996, the Commission sufficiently complied with its duty of openness by releasing a version of the document in question with their names blanked out.

As Bavarian Lager has not provided any express and legitimate justification or any convincing argument in order to demonstrate the necessity for those personal data to be transferred, the Commission has not been able to weigh up the various interests of the parties concerned. Nor was it able to verify whether there was any reason to assume that the data subjects' legitimate interests might be prejudiced, as required by the Data Protection Regulation.

The Court of Justice therefore concludes that the Commission was right to reject the application for access to the full minutes of the meeting of October 1996.

Consequently, the Court of Justice **annuls the judgment of the Court of First Instance.**

³ Case [T-194/04](#) *Bavarian Lager v Commission*

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355