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**Livia Járóka**  
Vice-President of the European Parliament

D 304533 23.07.2021

**REGISTERED LETTER**  
**WITH ACKNOWLEDGMENT OF RECEIPT**

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

**Subject:** Your application for public access to documents  
Our reference: **EP(2021)011519C** (to be quoted in future correspondence)

Dear Ms Izuzguiza, dear Mr Semsrott,

On 28 April 2021, the European Parliament registered your application, based on Regulation (EC) No 1049/2001<sup>1</sup> ('initial application'), for public access to all documents from 20 October 2020 to date related to:

- (1) the request treated under procedure 2020/2240(IMM) for the waiver of immunity of Mr Ioannis Lagos, MEP, including all meeting documents, correspondence, briefing notes, legal opinions and every document in committee dossier JUR/9/04660; and
- (2) allowances granted to Mr Lagos by the European Parliament, including any correspondence regarding such allowances, and the payment of salaries to Mr Lagos' local and accredited parliamentary assistants.

<sup>1</sup> 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.

In its decision of 9 June 2021 ('initial decision'), Parliament has:

- (1) under of point (1) of your application, noted the public availability of the committee report and Parliament's corresponding decision to waive Mr Lagos' immunity,<sup>2</sup> as well as the agendas and minutes of the relevant meetings,<sup>3</sup> and, in accordance with point (b) of Article 4(1) and the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001, read in conjunction with Union legislation regarding the protection of personal data, refused access to:
  - the transmission letter containing the request for the waiver of immunity;
  - a related communication to Members; and
  - recordings of the three meetings held under procedure 2020/2240(IMM).
- (2) under point (2) of your application 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, refused access to documents related to:
  - allowances granted to Mr Lagos by the European Parliament;
  - correspondence regarding those allowances; and
  - the payment of salaries to Mr Lagos' local and accredited parliamentary assistants.

A preliminary remark included in Parliament's initial decision sought to shed light on the particular nature of procedures on immunity in order to make clear the context in which Parliament's takes its decisions. In particular, as noted in the initial decision, paragraph 11 of Rule 9 of the Rules of Procedure provides that immunity matters, including, in particular, documents received with regard to such procedures, shall be treated by the competent committee with the utmost confidentiality.

### **Your confirmatory application**

On 1 July 2021, the European Parliament received your confirmatory application ('confirmatory application'), asking Parliament to reconsider its initial decision and provide public access to all identified documents.

You particularly base your request on the consideration that access to those of the identified documents that are not already publicly available:

- would not create a reasonably foreseeable risk of actually and seriously undermining the procedure on immunity;
- would not put pressure on the procedure on immunity and that such pressure would not create a reasonably foreseeable risk of substantially affecting Parliament's decision;

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<sup>2</sup> The procedure may be followed on the website of the legislative observatory here: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2240\(IMM\)&i=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2240(IMM)&i=en)

<sup>3</sup> The agendas and minutes are available on Parliament's public register of documents; however, please note that the minutes will be published only after formal approval, and may therefore not yet be available for more recent committee meetings: <https://www.europarl.europa.eu/RegistreWeb/home/welcome.htm>.

- would not create the kind of pressure that could alter Parliament's decisions, because Members of Parliament (MEPs) would not shift their own views in light of public opinion;
- would not create the kind of pressure that Parliament could object to, given that any such external influence would result from more transparency and from citizens' exercising their rights to freedom of expression and participation in the Union's democratic processes;
- would not concern personal data because documents containing "acts or opinions that have been attributed to" an elected representative would not represent personal data as such by default;
- would be necessary because additional public scrutiny, next to that of the competent independent judicial authorities and supervisory bodies, is a complementary form of scrutiny in any democratic society and because citizens have a right to draw their own conclusions, which is the purpose of the right to access to documents; and
- would respond to an overriding public interest, because the widespread media coverage with regard to Mr Lagos would then be more informed and more in-depth, which would be necessary given the circumstances.

### **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 documents<sup>4</sup>, 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. I do so in light of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, as well as Regulation (EU) 2018/1725<sup>5</sup> on the processing of personal data by Union institutions and bodies.

#### *A) Point (1) of your application*

I would first like to point out that, while Parliament's decision under procedure 2020/2240(IMM) lays out in some detail the factual and legal circumstances under which Parliament decided to waive Mr Lagos' immunity, Parliament's rules, and in particular paragraph 11 of Rule 9 of the Rules of Procedure, provide that procedures on immunity, including, in particular, any documents received with regard to such procedures, shall be treated with the utmost confidentiality. In addition, pursuant to this provision, the competent committee shall always consider requests relating to procedures on immunity in camera.

#### **The protection of the institution's decision-making processes**

In accordance with the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001, access to a document is to be refused where the disclosure of opinions for internal use would seriously undermine the institution's decision-making process.

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<sup>4</sup> Bureau decision of 28 November 2001 on the rules governing public access to European Parliament documents (OJ C 216, 22.7.2011, p. 19).

<sup>5</sup> 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.

This would be the case when the risk of a future disclosure of similar opinions would lead to a culture of self-censorship within the institution, depriving its decision-making bodies of frank and complete views.<sup>6</sup>

Parliament's rules concerning the confidentiality of certain documents relevant to procedures on immunity serve to protect the integrity of such procedures in light of their purpose to uphold parliamentary independence. Indeed, those of the identified documents that are not already publicly available are precisely those that, by their very nature, contain opinions and information that are relevant to the assessment, from the perspective of parliamentary independence, of the request to waive an MEP's immunity. If disclosed by Parliament, such confidential documents would invite pressure on and thus seriously undermine the immunity procedure.

Parliament is subject to sincere cooperation with Member States' authorities on requests for waivers (Article 4(3) TEU). Requests for waivers are dealt with utmost confidentiality because they concern, as in the present case, criminal procedures. In order to protect all persons concerned by such procedures, including witnesses and victims and perpetrators, meetings are held *in camera*, thus with a strictly limited participation of members of JURI and those staff which are indispensable to support the work of the Members. The relevant documents, such as the Notice to the Members, are also circulated only amongst those who have a need to know. It is not allowed to take copies or to circulate these documents freely. The minutes contain only the result but no individual opinions expressed by the Member concerned by the request for a waiver or by any member of JURI. No recordings are made or allowed because this would undermine the *in camera* form of the meetings. If Parliament were to release the documents transmitted by national authorities in order to justify a request for a waiver, the sincere cooperation between the Parliament and these national authorities would be endangered if not made impossible.

For this reason, an obligation for Parliament to disclose such confidential documents would seriously undermine Parliament's decision-making process when deliberating on a request for waiver of immunity. Parliament holds a wide margin of discretion in the political decision of waiving or not the immunity of one of its members. Immunity serves to protect the functioning and independence of the Parliament and of its members. It is in this context that Parliament's rules, and in particular paragraph 11 of Rule 9 of the Rules of Procedure, provide for the treatment with utmost confidentiality of any documents received with regard to procedures on immunity.

According to the relevant case-law, the overriding need to ensure that certain, by their nature confidential procedures operate correctly, and in order to guarantee that the objectives of such procedures are not jeopardised, general presumptions of non-disclosure may apply to documents relevant to such confidential procedures.<sup>7</sup> In light of the purpose of the procedure on immunity and in particular the obligation of sincere cooperation with national authorities, a general presumption exists according to which public access to confidential documents of the above-described nature would seriously undermine Parliament's decision-making process in the sense of the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

For these reasons, I consider that the exception regarding the protection of the institution's decision-making process applies to those documents identified under point (1) of your application that are not already in the public domain.

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<sup>6</sup> Judgment of the Court of first Instance of 8 September 2008, *My Travel group plc v European Commission*, T-403/05, ECLI:EU:T:2008:316, paragraph 50-52.

<sup>7</sup> Judgment of the General Court of 7 February 2018 in case T-718/15, *PTC Therapeutics International v European Medicines Agency (EMA)*, ECLI:EU:T:2018:66, paragraph 39.

## The protection of privacy and the integrity of the individual

In accordance with point (b) of Article 4(1) of Regulation (EC) No 1049/2001, access to a document shall be refused where this would undermine the protection of personal data. This would notably be the case if personal data were transmitted in breach of Regulation (EU) 2018/1725. Specifically, point (b) of Article 9(1) of that Regulation requires that recipients other than Union institutions may only receive personal data if they demonstrate that such transmission is necessary for a specific purpose in the public interest.

Given that the documents identified under point (1) of your application that are not already in the public domain contain information about criminal offences that have been attributed to Mr Lagos and that have given rise to criminal convictions, they contain personal data of Mr Lagos within the meaning of Article 3(1) of Regulation (EU) 2018/1725. In addition, the request for the waiver of immunity also contains personal data of other defendants and witnesses, which should be protected.

In your confirmatory application, you claim that documents "*related to the work of MEPs*" could not be considered to contain personal data under the circumstances described above. I would first like to note that many documents related to the work MEPs do in an institutional capacity are indeed publicly available, for example with regard to amendments, questions to the Commission or committee reports. On the other hand, those of an MEPs' documents which relate to their political activity but have no institutional character are not Parliament documents for the purposes of Regulation (EC) No 1049/2001,<sup>8</sup> and do not, therefore, fall within the scope of applications for public access to documents, regardless of whether they can be considered to be "*related to the work of MEPs*". Lastly, I would like to point out that the documents in question do not relate to the work of Mr. Lagos, but to the circumstances of his conviction in Greece. Crucially, however, the question of whether or not documents relate to the work of an MEP does not affect the wide scope of the notion of personal data as defined in Article 3(1) of Regulation (EU) 2018/1725.

You also contest Parliament's assertion that media coverage of the procedure on immunity does not depend on public access to confidential documents, not least given the public availability of key documents.

In that sense, you assert that those documents that are publicly available only allow for an insufficient and superficial overview of the procedure on immunity. However, this is not the case. The relevant decision taken by Parliament clearly sets out the circumstances under which it has been asked to waive Mr. Lagos' immunity, makes reference to the procedural requirements and the relevant legal provisions and indicates which aspects of the case were relevant to its decision, and which were not. Specifically, recital E refers to the subject of Mr. Lagos' convictions and recitals H, O, P and Q note, in detail, those elements from which can be ascertained whether or not Parliament's functioning and independence would be at risk from the waiver of Mr Lagos' immunity.

Given that the procedure on immunity does not concern Mr. Lagos guilt or otherwise, nor the merits of national judicial systems, Parliament's decision allows for a detailed overview of all aspects relevant to the outcome of the procedure on immunity.

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<sup>8</sup> Second subparagraph of Rule 122(2) of Parliament's Rules of Procedure.

Indeed, access to the confidential documents identified under point (1) of your application would provide little further insight into the procedure on immunity, while potentially revealing details of the facts of the case that are relevant only to the underlying national procedures, that is to say, precisely the kind of details that, when revealed by Parliament, would blur the line between Parliament's and Member States' responsibilities, inviting misplaced criticism of, and undermining confidence in, both the immunity procedure and the relevant national judicial proceedings.

Given the above and that the fact that documents containing personal data are relevant to an existing public debate does not by itself demonstrate the necessity of the transfer of such data,<sup>9</sup> I confirm that you have not established the necessity of the transfer under point (b) of Article 9(1) of Regulation (EU) 2018/1725.

For these reasons, I consider that the conditions for the transmission of any personal data contained in those documents identified under point (1) of your application that are not already in the public domain have not been satisfied and that the exception regarding the protection of privacy and integrity of the individual applies to those documents.

*B) Point (2) of your application*

In your confirmatory application, you do not challenge the fact that the documents identified under point (2) of your application contain personal data, nor do you contest the applicability of the relevant provisions.

You do, however, challenge Parliament's view that the transfer of the relevant information regarding the salaries and allowances of Mr. Lagos and his assistants is not necessary, because, in a democratic society, scrutiny of an individual's personal data with a view to investigating possible instances of improper or illegal behaviour is to be carried out by the competent independent judicial authorities and supervisory bodies. Specifically, you put forward that "*public scrutiny - in particular by members of civil society, journalists and researchers*" were not incompatible with the investigations of the proper authorities and that such complementary scrutiny were particularly appropriate in a democratic society and with regard to MEPs.

In light of your position, I would first like to note that public scrutiny of documents is, in fact, often incompatible with the proper conduct of investigations, inspections, audits and court proceedings such documents might be involved in. However, your argument concerning the compatibility of complementary public scrutiny with that undertaken by the proper authorities would not demonstrate why such public scrutiny was necessary for a specific purpose in the public interest.

You also claim that complementary public scrutiny of the finances of MEPs and their assistants is in the public interest. As already pointed out above, the fact that documents containing personal data are relevant to an existing public debate does not by itself demonstrate the necessity of the transfer of such data. At the same time, and as noted in Parliament's initial response, MEPs' public activities often create public awareness, and media coverage of such activities is generally in the public interest. However, that public interest stems from the fact that, without media coverage, the public might not become aware of MEPs' activities, which might in many cases be relevant to MEPs' accountability towards voters.

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<sup>9</sup> Judgment of the General Court of 15 July 2015, *Dennekamp v Parliament*, T-115/13, ECLI:EU:T:2015:497, paragraph 84.

Conversely, this reasoning does not apply to MEPs' and assistants' salaries and allowances, on which detailed information is publicly available.<sup>10</sup> Should individual MEPs or assistants violate their obligations under their employment contracts or the relevant codes of conduct or indeed become subject of an investigation by a Member State's public prosecutor's office, it is for the relevant authorities or bodies to make an assessment and draw the appropriate consequences, and, where applicable, make those consequences public. This system, wherein an individual's suspected misconduct is subject to scrutiny at the hands of designated impartial authorities and bodies, not only ensures that society's responses to wrongdoing are trustworthy and proportionate, but equally protects those accused of wrongdoing from partisan persecution. It is therefore not in the public interest to make personal data publicly available in order to facilitate complementary public scrutiny of individuals by members of the general public or the press who suspect those individuals of wrongdoing beyond that determined or currently investigated by the appropriate authorities.

For these reasons, Parliament considers that the conditions under point (b) of Article 9(1) of Regulation (EU) 2018/1725 for the transmission of personal data have not been satisfied and that the exception regarding the protection of privacy and integrity of the individual applies to the documents requested under point (2) of your application.

### *C) 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. Without prejudice to the fact that partial access is not possible in cases where a presumption of non-disclosure applies, I confirm Parliament's conclusion that, insofar as the exceptions identified above do not apply to the entirety of the documents in question, partial access would not respond to the purpose of your application. For the same reasons, and since the number of document pages concerned would be very large, granting partial access would also constitute an excessive administrative burden, in particular taking into consideration the time-limits under Regulation (EC) No 1049/2001.

### **Conclusion**

Considering the above, Parliament confirms its initial decision, and, in accordance with point (b) of Article 4(1) and the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001, read in conjunction with Union legislation regarding the protection of personal data, refuses access to

- (1) the transmission letter containing the request for the waiver of immunity, a related communication to Members and recordings of the three meetings held under procedure 2020/2240(IMM); and
- (2) documents related to allowances granted to Mr Lagos by the European Parliament, correspondence regarding those allowances and the payment of salaries to Mr Lagos' local and accredited parliamentary assistants.

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<sup>10</sup> Details on the way MEPs and their assistants are paid are available here: <https://www.europarl.europa.eu/meps/en/about>.

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,



Lívia JÁRÓKA