



Council of the
European Union

Brussels, 27 April 2023
(OR. en)

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API 63

NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Public access to documents
- Confirmatory application No 09/c/02/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 24 March 2023 and registered on the same day (Annex 1).
- the reply from the General Secretariat of the Council dated 19 April 2023 (Annex 2).
- the confirmatory application dated 25 April 2023 and registered on the same day (Annex 3).

From: **DELETED**

Sent: Friday, March 24, 2023 1:44 PM

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: access to documents request - Transitional allowance Tusk (2)

Dear Madam, Sir

Council Regulation 2016/300 of 29 February 2016 determining the emoluments of EU high-level public office holders applies inter alia to the President of the European Council.

In response to a previous access to documents request, which was registered under reference 23/0312-lk/vk, the Council of the European Union has provided a document showing the period during which former President of the European Council Donald Tusk received a transitional allowance.

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, and in follow-up to the above-mentioned request, I am requesting documents which contain the following information:

- All declarations made by former President of the European Council Donald Tusk done in relation to article 10.4 of Council Regulation 2016/300.
- All documents which show whether in the period Mr Tusk received a transitional allowance, remuneration from any gainful activity was deducted from the allowance.

Allow me some context to this request. Article 10.3 of Council Regulation 2016/300 states that if "during the period for which they are entitled to the monthly transitional allowance, the former public office holders concerned take up any gainful activity, the amount by which their gross monthly remuneration (i.e. before deduction of taxes), together with the allowance provided for in paragraph 1 of this Article, exceeds the remuneration, before deduction of taxes, which they were receiving as active public office holders under Articles 2, 5 and 6, shall be deducted from the allowance. In calculating the amount of remuneration received for the new activity, all forms of remuneration shall be included, except those representing the reimbursement of expenses."

Immediately after ceasing to hold office, i.e. 1 December 2019, Mr Tusk became president of the European People's Party. He held this post during the entire time he has received a transitional allowance from the Council. Mr Tusk also became leader of the Polish political party Civic Platform in 2021, partially during the period he was receiving a transitional allowance.

Although article 10.4 states that the declarations I request access to "shall be treated as confidential", I would like to argue that it is necessary to have this data transmitted to me for a specific purpose in the public interest.

As stated in the context of my previous request, I would like to establish as an investigative journalist, whether the payments of the transitional allowance to Donald Tusk have been made in conformity with the applicable rules.

I want to establish whether Mr Tusk has declared his gainful activities as president of the European People's Party and as leader of the Civic Platform party, and whether any remuneration for these activities have been properly deducted from his transitional allowance.

The objective in the public interest pursued by my request cannot be attained by other, less invasive means than the transmission of the actual data contained in the requested documents.

Sincerely

DELETED



Council of the European Union

General Secretariat

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit / Transparency

Head of Unit

Brussels, 19 April 2023

DELETED

E-mail: **DELETED**

Ref. 23/0892-lk/ns

Request made on: 24.03.2023

Dear **DELETED**,

Thank you for your request for access to any documents of the Council of the European Union which contain information on the following :

“- All declarations made by former President of the *European Council Donald Tusk* done in relation to article 10.4 of Council Regulation 2016/300.

- All documents which show whether in the period Mr Tusk received a transitional allowance, remuneration from any gainful activity was deducted from the allowance.”¹

We have identified the following four documents falling within the scope of your request :

- a declaration made by Mr Tusk with regard to Article 10 of Council Regulation (EU) 2016/300 of November 2019 ;
- a declaration made by Mr Tusk with regard to Article 10 of Council Regulation (EU) 2016/300 of December 2019 ;
- a declaration made by Mr Tusk with regard to Article 10 of Council Regulation (EU) 2016/300 of December 2021 ;

¹ The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

- the assessment regarding Mr. Tusk's transitional allowance according to article 10 of Council Regulation (EU) 2016/300 of November 2019 based on the above mentioned declaration.

I regret to inform you that access to these documents cannot be given.

Article 10(4), second subparagraph of Regulation 2016/300² provides that such declarations *"...shall be treated as confidential. The information contained in that declaration shall not be used otherwise than for the purposes of this Regulation and shall not be communicated to third parties."*

It would therefore be in violation of the above provision if such confidential declarations, addressed to the President of the institution in which the former public office holder was previously employed, and the information contained therein were communicated to a third party to be used for a purpose other than those of Regulation (EU) 2016/300.

Furthermore, the documents identified contain personal data. Under Article 9(1)(b) of Regulation (EU) 2018/1725³, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if *"... the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests."*

The specific purpose that you have invoked in support of your claim to obtain access to such personal data is *"to establish as an investigative journalist, whether the payments of the transitional allowance to Donald Tusk have been made in conformity with the applicable rules"* and in particular *"to establish whether Mr Tusk has declared his gainful activities as president of the European People's Party and as leader of the Civic Platform party, and whether any remuneration for these activities have been properly deducted from his transitional allowance."* You also affirm that *"the objective in the public interest pursued by my request cannot be attained by other, less invasive means than the transmission of the actual data contained in the requested documents."*

While we fully agree that it is in the public interest that funds from the EU budget are spent in accordance with the applicable legal provisions, as well as in accordance with the principle of sound financial management, we would like to draw your attention to the fact that the payment of transitional allowances is, as any other payment from the EU budget, subject to internal and external control mechanisms. The existence of such mechanisms, which provide the necessary safeguards for the attainment of the public interest objective mentioned above, renders any transmission of the relevant personal data to third parties disproportionate and hence a violation of

² Council Regulation (EU) 2016/300 of 29 February 2016 determining the emoluments of EU high-level public office holders (OJ L 58, 4.3.2016, p. 1–12)

³ 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 (OJ L 295, 21.11.2018, p. 39).

the above cited provisions of EU law. As regards the purpose to be able to inform, as an investigative journalist, EU citizens on whether the relevant payments were made in accordance with the applicable rules, the General Secretariat considers that the transmission of the personal data that figure in the documents, given their nature, is likely to prejudice Mr. Tusk's legitimate interests and therefore fails the first step of the proportionality test laid down in Article 9(1)(b) of Regulation (EU) 2018/1725. Access to such documents should therefore be denied under the exception protecting the privacy and the integrity of the individual concerned laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.

Yours sincerely,

Fernando FLORINDO

From: **DELETED**

Sent: Tuesday, April 25, 2023 2:07 PM

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: Internal review of access to documents request - Transitional allowance Tusk (2)

Dear Madam, Sir,

Please pass this on to the person who reviews confirmatory applications. I am filing a confirmatory application with regards to my access to documents request ref. 23/0892-lk/ns.

The Council identified four documents: three declarations made by Mr Tusk - in November 2019; in December 2019; and in December 2021 - and the assessment regarding Mr. Tusk's transitional allowance [...] of November 2019.

As I explained in my initial request, my purpose is to establish whether Mr Tusk has declared his gainful activities as president of the European People's Party and as leader of the Civic Platform party, and whether any remuneration for these activities have been properly deducted from his transitional allowance.

While the existence of the three declarations *suggest* that Mr Tusk has declared his gainful activities as president of the European People's Party and as leader of the Civic Platform party, it does not yet provide evidence. I would like to request that the Council reviews whether it could provide partial disclosure to answer this question.

The identification of three documents also suggests that Mr Tusk has failed to submit a declaration in December 2020. Article 10.4 requires that former public officer holders submit a declaration "on 1 January of each year" after leaving office. Can the Council confirm that Mr Tusk failed to submit his declaration required on 1 January of 2021?

Secondly, I also informed that I requested the documents to establish whether any remuneration for Mr Tusk's activities have been properly deducted from his transitional allowance. According to the identified documents, there was only one assessment regarding Mr. Tusk's transitional allowance, namely in November 2019.

I would request that the Council searches again. In the absence of any other assessments, I would ask: Can the Council clarify why there was no new assessment regarding Mr. Tusk's transitional allowance? Shouldn't there have been at least two more, considering that Mr Tusk declared gainful activities in December 2019; and in December 2021 (presumably respectively as president of the EPP and as leader of the Civic Platform) - and that any income from them should have been deducted from the allowance?

Sincerely

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