



EUROPEAN COMMISSION

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Mr Arun Dohle
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Germany

**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2016/3277**

Dear Mr Dohle,

I refer to your letter of 19 July 2016, registered on 25 July 2016, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² ('Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 12 June 2016, addressed to the Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL), you requested access to:

- *All correspondence, documents, training material including audiovisuals and list of participants related to training provided to EU Staff by the European Expert Group on Transition from Institutional to Community-based care (EEG) on Deinstitutionalisation (years 2015 and 2016).*

DG EMPL did not provide an initial reply to your request.

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

Through your confirmatory application you contest the implicit refusal resulting from an absence of an initial reply to your application.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General or service concerned at the initial stage.

Given the absence of an initial reply to your application, the Commission, at confirmatory stage, conducted a search for the documents requested in your initial application of 12 June 2016. The following documents are falling under the scope of your request:

Training of 2 October 2015:

1. Invitation letter expert I (including two annexes), 28/09/2015 (Ref. Ares(2015)3986817);
2. Invitation letter expert II, 28/09/2015 (Ref. Ares(2015)3986882);
3. PowerPoint presentation by the President of Eurochild and the Secretary General of EASPD (Ref. Ares(2016)4358736);
4. Conclusions of the training for Commission officials 02/10/2015 (Ref. Ares(2016)4358691);
5. Participants list (Ref. Ares(2016)4358603);

Training of 23 October 2015:

6. Invitation letter experts (including one annex), 14/10/2015 (Ref. Ares(2015)4279391);
7. PowerPoint presentation by the Commission (Ref. Ares(2016)4358530);
8. PowerPoint presentation by the President of EPSA (Ref. Ares (2016)4357805);
9. PowerPoint presentation by ENIL (Ref. Ares(2016)4358441);
10. Conclusions of the training for Commission officials 23/10/2015 (Ref. Ares (2016)4358298);
11. Participants list (Ref. Ares(2016)4358244);

Training of 10-11 May 2016:

12. Expert convocation for training on community-based care at the Commission (including agenda in annex), 02/05/2016 (Ref. Ares (2016) 2078113);
13. Participants list for 10 May 2016 (Ref. Ares(2016)4358195);
14. Participants list for 11 May 2016(2016)4358095;
15. PowerPoint presentations (Ref. Ares(2016)4358028);
16. Report EEG trainings 2016 (Ref. Ares(2016)4357914).

I am pleased to inform you that full access is granted to documents nr. 3, 4, 8 and 10. Wide partial access is granted to documents nr. 1, 2, 5, 6, 7, 9, 11, 12, 14, 15 and 16, based on Article 4(1)(b) (protection of the privacy and the integrity of the individual) of Regulation 1049/2001, for the reasons set out below.

Access is refused to document nr. 13, as granting partial access would be meaningless following the redactions to be conducted based on Article 4(1)(b) (protection of the privacy and the integrity of the individual) of Regulation 1049/2001, for the reasons set out below.

Article 4(1)(b) of Regulation 1049/2001 provides that *[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

Documents nr. 1, 2, 5, 6, 7, 9, 11, 12, 13, 14, 15 and 16 contain names, positions, e-mail addresses, telephone numbers, offices numbers, signatures and photos of Commission officials (not forming part of senior management) and/or of third-party representatives and experts (not being their main representatives). These data constitute personal data within the meaning of Article 2(a) of Regulation 45/2001³, which defines personal data as *any information relating to an identified or identifiable natural person [...]; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.*

In consequence, the public disclosure of these data in the requested documents would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001.

³ 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.

In accordance with the *Bavarian Lager* ruling⁴, when a request is made for access to documents containing personal data, Regulation 45/2001 becomes fully applicable. According to Article 8(b) of that Regulation, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative.⁵ Only if both conditions are fulfilled and the processing is lawful in accordance with the requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur.

I would also like to bring to your attention the recent judgment in the *ClientEarth* case, where the Court of Justice ruled that *whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access.*⁶ I refer also to the *Strack* case, where the Court of Justice ruled that the Institution does not have to examine by itself the existence of a need for transferring personal data⁷.

Neither in your initial, nor in your confirmatory application, have you established the necessity of disclosing any of the above-mentioned personal data. Therefore, I have to conclude that the transfer of personal data through the (full) disclosure of the requested documents cannot be considered as fulfilling the requirement of Regulation 45/2001. Consequently, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to publicly disclose the personal data included therein and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

Please note that Article 4(1)(b) of Regulation 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

3. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting (further) partial access to the documents requested. However, for the reasons explained above, no meaningful (further) partial access is possible without undermining the interests described above.

Consequently, I have come to the conclusion that the (withheld parts of the) documents requested are covered in their entirety by the invoked exceptions to the right of public access.

⁴ Judgment in *Commission v Bavarian Lager*, case C-28/08 P, EU:C:2010:378.

⁵ Ibid., paragraphs 77 to 78.

⁶ Judgment in *ClientEarth and PAN Europe v EFSA*, case C-615/13 P, EU:C:2015:489, paragraph 47.

⁷ Judgment in *Strack v Commission*, case C-127/13 P, EU:C:2014:2250, paragraph 106.

4. MEANS OF REDRESS

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission
Alexander ITALIANER
Secretary-General*

Enclosures:

- Documents nr. 1, 2, 5, 6, 7, 9, 11, 12, 14, 15 and 16 (including annexes where applicable).