

EUROPEAN COMMISSION
Neighbourhood and Enlargement Negotiations

The Director-General

Brussels,

03 AVR. 2017

By registered letter:

Mr. Arun Dohle
Viktoriastr. 46
52066 Aachen
Germany

Advance copy by email:

arundohle@gmail.com
ask+request-3575-d5b31287@asktheeu.org

**Subject: Your application for access to documents
Ref GestDem No 2017/910**

Dear Mr Dohle,

I refer to your email addressed to the Secretariat-General of the Commission on 14 February 2017, in which you make a request for all the documents related to all the contracts of the European Commission with the Italian adoption agency Amici dei Bambini, from 1990 until present.

Several Commission departments are handling your request. By two letters dated 6 and 22 March 2017, DG NEAR informed you that 10 contracts had been identified which fall within the responsibility of DG NEAR; 200 documents correspond to these contracts, amounting to circa 5000 pages; most documents are not in an electronic version and their hard copies are stored in the premises of the delegations of the European Union to four third countries. We indicated that the workload for dealing with your application (including the scanning and the analysis page by page) would require approximately 100 working days. Therefore, pursuant to Article 6(3) of Regulation (EC) No 1049/2001, we invited you to propose a fair solution for dealing with your request for access to documents, by specifying the objective of your request and your specific interest in the documents requested, thereby narrowing down the scope of your request.

You replied to the Secretariat-General on 28 March 2017, asking for the project proposals, the contracts, the interim and final reports, the CVs of team leaders and the evaluation reports for all the ten contracts identified.

Your application concerns the ten following contracts signed between the European Commission/EU Delegations and the organisation Amici dei Bambini:

- 1) Grant Contract 2002 / 105412: Implementation of new services to facilitate the social integration of institutionalised children, Del. Albania, Ref. Ares (2017) 159694;
- 2) Grant Contract 2004 / 78407: Prevention and fight against child trafficking in Albania in the form of illegal and commercial adoption, Del. Albania, Ref. Ares(2017)1596809;
- 3) Grant Contract 2006 / 132768: Family based and Community based Care for children without parental care, Del. Albania, Ref. Ares(2017)1597110;
- 4) Grant Contract 2001 / 67592: A WEB for Peace, Del. Bosnia and Herzegovina, Ref. Ares(2017)159586;
- 5) Grant Contract 2002 / 20185: Prévention de l'abandon infantile, développement d'un système sanitaire durable et promotion de l'intégration socio-éducative d'enfants handicapés, Del. Morocco, Ref. Ares(2017)1597413;
- 6) Grant Contract 2015 / 370296: PLATEFORME CDE : Projet de création d'une Plateforme Nationale pour le développement, la mise en oeuvre et le suivi des politiques publiques en matière d'enfance, dans le respect de la CDE, Del. Morocco, Ref. Ares(2017)1597665;
- 7) Grant Contract 2003 / 061514: Support to socially vulnerable families for prevention of children abandonment in Moldova, Del. Ukraine, Ref. Ares(2017)1598751;
- 8) Grant Contract 2005 / 099569: Promotion of new services to facilitate the family reintegration process of institutionalised children in Moldova, Del. Ukraine, Ref. Ares(2017)1598301;
- 9) Grant Contract 2003 / 062381: De-institutionalisation of children in Public Care and promotion of the social and family reinsertion, Del. Ukraine, Ref. Ares(2017)1598510;
- 10) Grant Contract 2009 / 201618: Empowering NSAs and LAs in Moldova and Ukraine to promote social inclusion of young care leaver, Del. Ukraine, Ref. Ares(2017)1598040.

Having examined all the documents that you requested for each of the above contracts under the provisions of Regulation (EC) No 1049/2001, I have come to the conclusion that some of them shall be disclosed, some others shall be partially disclosed and some others shall not be disclosed.

Please note that each contract consists of a set of several documents and annexes, which have to be treated separately.

Full access can be granted to Annex II: General Conditions, Annex IV: Contract award procedures / Procurement rules for Beneficiary (ies), to the templates of Annex V: Financial identification form, Annex VI: Final Narrative Report and Annex VII: Expenditure verification for each of the ten contracts identified¹.

No Curriculum Vitae of team leaders have been identified for any of the ten requested contracts.

Partial access can be granted to the special conditions and to the Annex III – Budget of the action for each contract identified, based on Article 4(1)b (protection of personal

¹ Please note that the signatures have been redacted in accordance with Regulation (EC) No 45/2001. However, full access is being granted to the content of the documents.

data) and Article 4(2), first indent (protection of commercial interests) of Regulation (EC) No 1049/2001.

Access must be fully refused to the project proposals (Annex I of the contracts – Description of the action), the interim and final reports and the evaluation reports of the ten contracts, based on Article 4(1)b (protection of personal data) and Article 4(2), first indent (protection of commercial interests) of Regulation (EC) No 1049/2001.

The justifications for the above partial access and denial of access are as follows.

Article 4(1)b of Regulation (EC) No 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."

The applicable legislation in this field is Regulation (EC) No 45/2001 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. When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable. According to Article 8(b) of this Regulation, "personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced". We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. If you wish to receive these personal data, we invite you to provide us with arguments explaining your need for such information and demonstrating that there would be no adverse effects to the legitimate rights of the persons whose data should be disclosed. The exception set out in Article 4 (1) (b) of Regulation (EC) No 1049/2001 is not subject to a public interest test.

Article 4(2), first indent, of Regulation (EC) No 1049/2001 provides that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, [...], unless there is an overriding public interest in disclosure".

The withheld parts of Annex III contain the detailed budget of the respective projects, including descriptions of items, their precise amounts, prices per units and budgets for co-beneficiaries. The project proposals contained in Annex I describe in detail the actions to be conducted through the grant, the project's methodology and the possible involvement of partner organisations. They contain information on detailed operational aspects of the implementation of the proposed actions, such as the scope and description of actions, and their timetable. These descriptions reflect the beneficiary's grant applications and constitute inside knowledge of Amici dei Bambini.

Given the content of the project proposals, the narrative, financial and evaluation reports, these documents in their entirety have to be considered as elements reflecting the specific know-how and experience belonging to Amici dei Bambini. That know-how was taken into account by the Commission when evaluating the applications submitted under the call for proposals organised for each of the ten grants, and, therefore, contributed to the attractiveness of the funding applications of the beneficiary. In turn, that information had a major impact on selection of the applications of the beneficiary from among other ones submitted under the above call. The public disclosure of such information would

undermine the "commercial interests" of Amici dei Bambini, as it would give other potential grant applicants in future calls the possibility to copy from that application and use it to support their own application. Please note that the term "commercial" is used in accordance with Regulation (EC) No 1049/2001, despite the fact that the entity in question is a non-governmental, therefore a non-profit organisation.

In this context, I would also like to bring to your attention case T-439/08, *Agapiou Josephides v Commission*², where the General Court ruled that "methodology and expertise [...] highlighted as part of the grant application, [...] relate to the specific know-how [...] and contribute to the uniqueness and attractiveness of applications in the context of calls for proposals such as that at issue, which was intended to select one or more applications, following in particular a comparative review of proposed projects. Thus, particularly given the competitive environment in which [the project promoters] operate, it is necessary to consider that the information in question is confidential".

Furthermore, the General Court in its Judgement of 29 January 2013 in case T-339/10, *Cosepuri v EFSA*³, ruled that "[i]t follows from all the foregoing that EFSA did not err in considering, in essence, that there was a general presumption that access to the bids submitted by the other tenderers would, in principle, undermine the interest protected. The applicant has not put forward any evidence to justify the conclusion that, in the present case, that presumption did not apply to the documents disclosure of which was requested." I consider this conclusion to apply in analogy to descriptions of projects which reflect the content of grant applications as well as detailed (proposed) budgets, like the documents in question.

Finally, the exception of Article 4(2), first indent, of Regulation (EC) No 1049/2001 has to be read in light of the following provisions:

- Article 339 of the Treaty on the Functioning of the European Union, which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components;
- Article 195(1)(c) of the Rules of Application of the Financial Regulation 3, which provides that the confidentiality of proposals must be preserved.

In consequence, there is a real and non-hypothetical risk that public access to the abovementioned information would undermine the "commercial interests", including intellectual property, of the grant applicant, i.e. Amici dei Bambini.

The exception laid down in Article 4(2), first indent (protection of commercial interests) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In our proposal for a fair solution dated 22 March 2017, we invited you to specify the objective of your request and your specific interest in the documents requested. You responded by providing a list of document types without specifying the objective or your interest.

² Paragraphs 127 and 128.

³ Paragraph 101.

In this regard, I would like to refer to the Commission's Financial Transparency System⁴, which displays, among other data, the names of the beneficiaries of funds awarded by the Commission every year, their location, the purpose of the expenditure and its amount. Consequently, I consider that the public interest in providing information concerning these grants is taken into account through the above-mentioned publications and publicly available information. In contrast, there is a real and non-hypothetical risk that full public access to the requested documents would undermine the commercial interests of the grants beneficiary, as explained above.

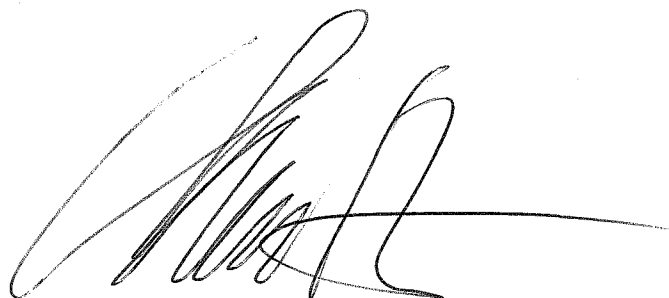
Therefore, I have not been able to identify any public interest capable of overriding the public and private interests protected by Article 4(2), first indent (protection of commercial interests) of Regulation (EC) No 1049/2001.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review its position. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Brussels

or by email to:
sg-acc-doc@ec.europa.eu

Yours sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Christian Danielsson

⁴ http://ec.europa.eu/budget/fts/index_en.htm. Please note that data for any given year is not published until the following year. You can find detailed explanations on the information provided by the FTS here: http://ec.europa.eu/budget/fts/about_en.htm.