

**EUROPEAN COMMISSION**  
Neighbourhood and Enlargement Negotiations

The Director-General

Brussels,

**26 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 2017/1913**

Dear Mr Dohle,

I refer to your email addressed to the Secretariat-General of the Commission on 28 March 2017, in which you make an application for access to the contract *No. PHARE/2003/064-754* concluded between the European Commission and the organisation Amici dei Bambini, in particular to the project proposal, contract, interim and final reports, CVs of team leaders and evaluation reports.

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

Full access can be granted to Annex II: General Conditions, Annex IV: Contract award procedures and to the template of Annex V: Financial identification form.

No Curriculum Vitae of team leaders have been identified for this contract.

Partial access can be granted to the special conditions, to the addendum to the contract and to the Annex III – Budget of the action, 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.

Access must be fully refused to the project proposal (Annex I of the contracts – Description of the action), the interim and final reports and the evaluation reports 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.

For what concerns the protection of personal data, 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.

For what concerns the protection of commercial interests, 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 project, including descriptions of items, their precise amounts, prices per units and budgets for co-beneficiaries. The project proposal contained in Annex I describes in detail the actions to be conducted through the grant, the project's methodology and the possible involvement of partner organisations. It contains information on detailed operational aspects of the implementation of the proposed actions, such as the scope and description of actions, and their timetable. This description reflects the beneficiary's grant application and constitutes inside knowledge of Amici dei Bambini.

Given the content of the project proposal, 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 application submitted under the call for proposals organised for this grant, and, therefore, contributed to the attractiveness of the funding application of the beneficiary. In turn, that information had a major impact on selection of the application 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.

In this context, I would also like to bring to your attention case T-439/08, *Agapiou Josephides v Commission*<sup>1</sup>, 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*<sup>2</sup>, 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<sup>3</sup> 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 your application, you do not explicitly put forward an overriding public interest in disclosure. However, I certainly understand the interest of the public of being informed as comprehensively as possible about the different projects financed by the EU in third countries.

In this regard, I would like to refer to the Commission's Financial Transparency System<sup>4</sup>, which displays, among other data, the names of the beneficiaries of funds awarded by the

---

<sup>1</sup> Paragraphs 127 and 128.

<sup>2</sup> Paragraph 101.

<sup>3</sup> Commission Delegated Regulation (EU) No 1266/2012

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.

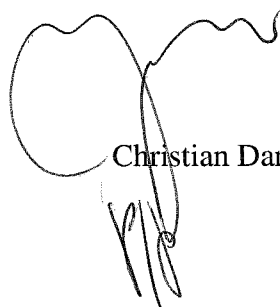
Therefore, I have not been able to identify any public interest capable of overriding the public and private interests protected by Article 4(2), first indent (protection of commercial interests) of Regulation (EC) No 1049/2001.

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,



Christian Danielsson

---

<sup>4</sup> [http://ec.europa.eu/budget/fts/index\\_en.htm](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](http://ec.europa.eu/budget/fts/about_en.htm).

## **Annex**

The below documents are being sent in electronic format only.

Grant Contract 2003 / 064754: "Orphan children, from institutional care to family-based care. The development of fostering and adoption for the right of the child to grow in family upbringing. An international comparison between Western and Eastern Europe", *Ref. Ares (2017) 1994713*.

- Contract – Special conditions and Addendum no 1 to the contract;
- Annex II – General conditions applicable to European Community-financed grant contracts for external relations;
- Annex III – Budget for the action;
- Annex IV – Contract award procedures;
- Annex V – Standard request for payment and financial identification form.