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SECRETARIAT-GENERAL

Directorate B
Director

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Mr Aris Kolimatsis

By e-mail only:
ask+request-595-0a88b942@asktheeu.org

**Subject: Confirmatory application for access to documents under Regulation (EC)
 No 1049/2001 - GESTDEM 2013/3418**

Dear Mr Kolimatsis,

I refer to your e-mail of 26 August 2013, registered on 13 September by which you lodge a confirmatory application, in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter: Regulation 1049/2001).

In your initial application of 25 June 2013, addressed to Directorate-General for Enterprise and Industry (hereafter DG ENTR) you requested access to:

"the following documents, all of which are directly related to DPO-3324.1 and the stipulations of Regulation No 45/2001 and Commission Decision 597/2008 'adopting implementing rules concerning the Data Protection Officer.....':

- 1. The documents drawn up by the DPO-3334.1 data controller.*
- 2. The documents drawn up by the DG ENTR Data Protection Coordinator about the processing operations of DPO-3334.1.*
- 3. The documents drawn up by the European Commission Data Protection Officer about the processing operations of DPO-3334.1, including those he dispatched to the EDPS.*
- 4. The EDPS document with his conclusion that 'Article 27 is not applicable'.*
- 5. Concerning the 'specific tool allowing the exchange of lists of projects (for an auditee')....' the following documents drawn up either by Commission staff (including intra-muros), or the Commission's external informatics contractors, but NOT by vendors of Information Technology products:*

a. The user manuals

¹ Official Journal L145, 31.05.2001, p. 43.

- b. *The technical documentation of the tool, or their equivalents, which include the documents 'Software Requirements Specifications Document', the 'Software Design Document', the 'Test Cases Specifications', the 'Test Report' and the 'System Administration Manual'.*
 - c. *The document(s) describing in detail how information from the Information Systems of the Research family DGs is to be accessed or extracted for use in the tool.*
 - d. *The internal 'decision' about the development and further maintenance of the tool. The term 'decision' includes also the implied 'decision' of DG ENTR to develop or use the tool.*
- 6. *Concerning the 'specific tool to facilitate searching and visualisation of information about participants in grants and contracts' the following documents drawn up either by Commission staff (including intra-muros), or the Commission's external informatics contractors, but NOT by vendors of Information Technology products:*
 - a. *The user manuals*
 - b. *The technical documentation of the tool, or their equivalents, which include the documents 'Software Requirements Specifications Document', the 'Software Design Document', the 'Test Cases Specifications', the 'Test Report' and the 'System Administration Manual'.*
 - c. *The document(s) describing in detail how information from the Information Systems of the Research family DGs is to be accessed or extracted for use in the tool.*
 - d. *The internal 'decision' about the development and further maintenance of the tool. The term 'decision' includes also the implied 'decision' of DG ENTR to develop or use the tool.*
- 7. *The DG ENTR prior notification of article 25 of Regulation No 45/2001 concerning the DG ENTR external financial audits prior to 20/3/2011.*
- 8. *DG ENTR drawn up documents bringing to the attention of the Member of the Commission responsible for DG ENTR:*
 - a. *That DPO-3334.1 essentially states that no subcontractors had been engaged in DG ENTR external financial audits of FP6 contractors and FP7 beneficiaries, which appears to be in total contradiction with reality. For instance, page 36 of the 2011 DG ENTR Annual Report, table 3.3 states that DG ENTR paid in 2008 – 2011 for 'Cost of outsourced auditing (in €)' over 2.2 million Euro.*
 - b. *That it is not immediately obvious that the particular passage of the statement of assurance in page 58 of the said annual report 'Confirm that I am not aware of anything not reported here which*

could harm the interests of the institution' is fully in line with what a diligent public administration ought to have ensured in terms of legality. This is even more the case when the matter solely concerns compliance with article TFEU 16(1) and Regulation No 45/2001."

By its letter of 6 August 2013 DG ENTR provided you with an answer to your initial request. In this answer DG ENTR identified and listed 2 documents as falling under the scope of your request:

- i) Privacy Statement related to the notification " DPO-3334.1 DG ENTR External Audit and Control ",
- ii) Note for the attention of Mr. F.-H.BRUENER, Director-General OLAF , with subject: " Cooperation RTD.A.4/OLAF.C.4 on an enhanced risk-based auditing project."

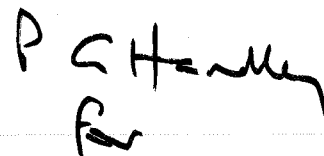
You uphold your confirmatory application for all the points raised in the initial application, except for point 3, and you claim that "*.. the initial reply must be understood as an implied decision to totally refuse access without a statement of reasons..*".

Against this background we have asked DG ENTR to inspect their files again in order to verify your statement above. The latter, after a detailed search, has confirmed that there are no documents covered by your confirmatory request for access, other than the ones which were already disclosed to you.

As Regulation (EC) No 1049/2001 covers documents which are in the possession of the institution who has received the application I consider that your confirmatory application has become devoid of purpose.

Please also note that Regulation 1049/2001 deals with public access for documents held by the Commission and thus it does not serve the purpose to address any other issues beyond the aim of it. Therefore, all statements going beyond the scope of Regulation 1049/2001 have not been addressed in the present letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Szlaszewski', with a stylized flourish below it.

Hubert Szlaszewski
Director