



EUROPEAN COMMISSION
RESEARCH EXECUTIVE AGENCY

Director

Brussels,
REA C0.1

Dr Manuela Troschke
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Germany

Sent by registered email to:
manuela.troschke@zitzmann.eu

Subject: Your application for access to documents - Ares(2020)7342265

Dear Dr Troschke,

We refer to your request for access to documents dated 29 November 2020 submitted to the Research Executive Agency (REA) on 4 December 2020 and registered on 7 December 2020 under the reference number Ares(2020)7342265. On 5 January 2021, REA extended the time limit to deal with your request within 15 working days.¹

1. SCOPE OF YOUR REQUEST

On 26 October 2020 you submitted your initial application for access to documents which was registered on 3 November 2020 under the reference number Ares(2020)6288476. In your application, you requested a copy of an official document issued by the German authorities and provided to REA by the entity 'STIFTUNG ZUR ERFORSCHUNG VON OST- UND SUDOSTEUROPA' for the purposes of its validation.

On 24 November 2020, REA replied to your initial request².

In its letter, REA provided you with a partial access to the Statutes respective Terms of Reference for Stiftung zur Erforschung von Ost- und Südosteuropaforschung (with the redaction of personal data in accordance with Article 4(1)(b) of Regulation (EC) No 1049/200) and a full access to the VAT document of the above-mentioned entity.

¹ Ares(2021)66603

² Ares(2020)7051031

On 4 December 2020, REA registered your confirmatory application, pursuant to Article 7(2) of Regulation 1049/2001.

In your confirmatory application, you ask REA to “*review its position concerning the disclosure of the document „Statutes respective Terms of Reference for Stiftung zur Erforschung von Ost- und Südosteuropa” (further “Statutes”) with the redaction of personal data and request the disclosure of these personal data*”.

2. ASSESSMENT OF YOUR CONFIRMATORY APPLICATION

When assessing a confirmatory application for access to documents, REA conducts a fresh review of the reply given at the initial stage in the light of the provisions of Regulation 1049/2001.

Following this review, I regret to inform you that I have to confirm the initial decision of REA to refuse a full access to the requested Statutes based on the exception of Article 4(1)(b) (protection of the privacy and integrity of the individual) for the reasons set out below.

2.1. Protection of privacy and the integrity of the individual

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*’.

The applicable legislation in this field is 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, repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (‘Regulation 2018/1725’).

The Statutes to which you requested access contain personal data of individuals such as the name, surname or signature that are not in the public domain. Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data ‘*means any information relating to an identified or identifiable natural person [...]*’. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data³.

In its judgment in Case C-28/08 P (Bavarian Lager)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.

Pursuant to Article 9(1) of Regulation 2018/1725, “*(...) personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if: (a) the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the recipient; or (b) the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the*

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in case C-434/16.

⁴ Judgment of 29 June 2010 in case C-28/08/P, European Commission v The Bavaria Lager Co. Ltd, EU:C2010:378, paragraph 63.

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."

Only if one of the conditions under (a) or (b) of Article 9(1) is fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, the transmission of personal data can occur.

In your confirmatory application, you justify your request by stating "I am seemingly unable to further influence the situation at Labour Courts and have to turn the case to the criminal court. There I should name all persons that might be responsible for damage caused to me, including the person who signed the Statutes submitted to REA".

I consider that you do not put forward relevant arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, REA does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and integrity.

I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data of the Statutes, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

3. CONCLUSION

Having re-examined your request, I have come to the conclusion that no further access is possible without undermining the interests described above because the expunged parts of the disclosed document is covered by the invoked exception to the right of public access.

4. MEANS OF REDRESS

I draw your attention to the means of redress available against this decision of the Agency. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court of the European Union or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,

(signed with Qualified Electronic Signature)

Marc TACHELET