



EUROPEAN COMMISSION

Brussels, 7.10.2019  
C(2019) 7353 final

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2019/4095**

Dear ██████████,

I refer to your email of 1 August 2019, registered on 2 August 2019, by 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 documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

**1. SCOPE OF YOUR REQUEST**

In your initial application of 5 July 2019, addressed to the Service for Foreign Policy Instruments of the European Commission, you requested access to the following documents, concerning the operations of the EU Coordinating Office for Palestinian Police Support, in the context of the EU Police Mission for Palestinian Territory<sup>3</sup>, I quote:

‘- Detailed budget of the [...] [EU] C[oordinating] O[ffice] [for] P[alestinian] P[olice] S[upport] mission 01/07/2017 - 30/06/2018;

- Detailed budget of the [...] [EU] C[oordinating] O[ffice] [for] P[alestinian] P[olice] S[upport] mission 01/07/2018 - 30/06/2019;

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

<sup>3</sup> EUPOL COPPS.

- Detailed budget of the [...] [EU] C[oordinating] O[ffice] [for] P[alestinian] P[olice] S[upport]mission 01/07/2019 - 30/06/2020;
- Code of Conduct of the Palestinian Civilian Police’.

The European Commission has identified the following documents as falling under the scope of your application:

- Budgetary Impact Statement of the EU Coordinating Office for Palestinian Police Support mission, for the period 1 July 2017 – 30 June 2018 (hereafter ‘document 1’);
- Budgetary Impact Statement of the EU Coordinating Office for Palestinian Police Support mission, for the period 1 July 2018 – 30 June 2019 (hereafter ‘document 2’);
- Budgetary Impact Statement of the EU Coordinating Office for Palestinian Police Support mission, for the period 1 July 2019 – 30 June 2020 (hereafter ‘document 3’)<sup>4</sup>.

On 26 July 2019, the Service for Foreign Policy Instruments of the European Commission granted partial access to the above-mentioned documents. The undisclosed parts thereof, were redacted based on the exceptions provided for in Article 4(1)(a), first and third<sup>5</sup> indents, Article 4(1)(b) and Article 4(3) of Regulation (EC) No 1049/2001. They protect, respectively, public interest as regards public security, international relations, as well as privacy and the integrity of the individual and the Institution’s decision-making process.

Through your confirmatory application, you request a review of this position.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General or service concerned at the initial stage.

Following that review, I can inform you that further partial access is now granted to documents 1-3. The relevant undisclosed parts of the above-mentioned documents still require protection under the exceptions in Article 4(1)(a), first and third indents, and Article 4(1)(b) of Regulation (EC) No 1049/2001. As mentioned above, they protect, respectively, public interest as regards public security, international relations, as well as privacy and the integrity of the individual.

The detailed reasons are set out below.

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<sup>4</sup> All three documents bear the same reference number Ares(2019)4718988.

<sup>5</sup> The initial reply erroneously referred to the exception in Article 4(1)(a), second indent, of Regulation (EC) No 1049/2001.

## **2.1 Protection of the public interest as regards public security**

Article 4(1)(a), 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 the public interest as regards public security'.

The documents requested relate to the ongoing operations of the EU Coordinating Office for Palestinian Police Support mission.

The relevant undisclosed parts of the documents 1-3 contain information relating to the operational details of the implementation of the mandate of the Coordination Office. This includes the complete description of the staff structure of the mission. Indeed, the documents concerned include the list of categories of staff of the mission, including the detailed breakdown of their tasks, together with the description of the remuneration grid. They also include the information about the personnel needs of the Office and the planned recruitments linked thereto. The information concerning the planned trips of the experts visiting the Office, as well as the planned trips of the mission staff is included in the documents.

The documents also includes the information concerning the assets of the Office, such as the description of the pool of cars (with the indication how many of them and which ones are armoured), information about the planned purchases of the equipment essential for the implementation of the mandate of the mission.

The mandate of the EU Coordinating Office for Palestinian Police Support mission, which is assisting the Palestinian Authority in building its institutions, is a very sensitive issue. Public disclosure of detailed information about the operational structure and the functioning of the mission would result in undermining the public interest as regards public security. There is a realistically foreseeable and not hypothetical risk that disclosure of this information to the public at large would undermine the actions of the Office.

Having regard to the above, I consider that the use of the exception under Article 4(1)(a), first indent (protection of the public interest as regards public security) of Regulation (EC) No 1049/2001 is justified concerning the redacted information included in documents 1-3 and that access to them must be refused on that basis.

## **2.2 Protection of the public interest as regards international relations**

Article 4(1)(a), third 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 [...] the public interest as regards [...] international relations [...]'].

As far as the protection of international relations is concerned, the EU Court has acknowledged that the institutions enjoy a wide discretion when considering whether access to a document may undermine that public interest<sup>6</sup>.

The relevant withheld parts of documents 1-3 include information regarding the components of the remuneration of various categories of staff members of the Office. Indeed, the rates of remuneration are composed of different allowances linked to, among others, the results of the EU assessment of the level of threat in the relevant country. Therefore, the actual amount of the daily rates needs to be considered as a sensitive information, as its height allows establishing the threat level, which the EU has assessed for a given country. Consequently, there is a risk that its public disclosure would undermine the diplomatic/international relations of the EU with the Palestinian authorities.

The information concerning the insurances for the assets and staff of the mission is based on the similar assessment.

Public disclosure by the European Commission of the above-mentioned information would put the EU in a difficult situation towards the Palestinian authorities, thus undermining the bilateral relations between them.

In the light of the above, I conclude that, there is a reasonable risk that public disclosure of the undisclosed parts of the documents concerned is likely to harm the interest protected by Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

### **2.3 Protection of privacy and the integrity of the individual**

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘the 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’.

In this context, please note that in its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>7</sup>, the Court of Justice ruled that when an application is made for access to documents containing personal data, 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<sup>8</sup> (‘Regulation (EC) No 45/2001’) becomes fully applicable.

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<sup>6</sup> Judgment of the Court of First Instance of 25 April 2007, in Case T-264/04, *WWF European Policy Programme v Council*, EU:T:2007:114, paragraph 40.

<sup>7</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as ‘*European Commission v The Bavarian Lager* judgment’), Case C-28/08 P, EU:C:2010:378, paragraph 59.

<sup>8</sup> Official Journal L 8 of 12.1.2001, p. 1.

As from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) No 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>9</sup> ('Regulation (EU) No 2018/1725').

However, the case-law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) No 2018/1725.

In the above-mentioned judgment the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 'requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation'.<sup>10</sup>

Article 3(1) of Regulation (EU) No 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'.<sup>11</sup>

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), 'there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life'.<sup>11</sup>

Documents 1-3 contain the detailed information relating to the remuneration of the identified individual – the Head of the mission of the EU Coordinating Office for Palestinian Police Support. As the identity of the above-mentioned individual is publically known, the information concerned pertains to the identified (or at least easily identifiable) individual. Consequently, it constitutes personal data in the meaning of Article 2(a) of Regulation (EU) No 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) No 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the 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 these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) No 2018/1725, can the transmission of personal data occur.

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<sup>9</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>10</sup> *European Commission v The Bavarian Lager* judgment quoted above, paragraph 59.

<sup>11</sup> Judgment of the Court of Justice of 20 May 2003, preliminary rulings in proceedings between *Rechnungshof and Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine of its own motion the existence of a need for transferring personal data.<sup>12</sup> This is also clear from Article 9(1)(b) of Regulation (EU) No 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) No 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighted the various competing interests.

Neither in your initial, nor in your confirmatory application, have you established the necessity of disclosing any of the above-mentioned personal data.

Consequently, I consider that the necessity for the transfer of personal data (through its public disclosure) included in the documents concerned has not been established. Therefore, the European Commission 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, 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 subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, 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.

Having regard to the above, I consider that the use of the exception under Article 4(1)(a), first indent (protection of the public interest as regards public security) of Regulation (EC) No 1049/2001 is justified concerning the relevant undisclosed information included in documents 1, 2 and 4, as well as the entirety of document 3 and that access to them must be refused on that basis.

### **3. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(1)(a) and Article 4(1)(b) of Regulation (EC) No 1049/2001 do not need to be balanced against overriding public interest in disclosure.

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<sup>12</sup> Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, Case C-615/13 P, EU:C:2015:489, paragraph 47.

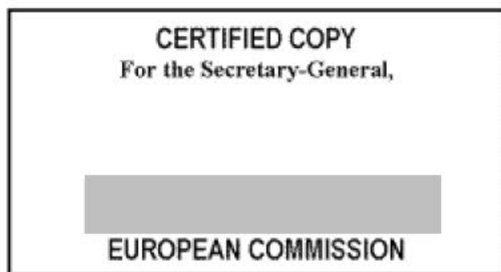
#### 4. PARTIAL ACCESS

(Further) partial access is hereby granted to documents 1-3. The undisclosed parts of the documents, in the view of the European Commission, still require protection under the exceptions in 4(1)(a), first and third indents, of Regulation (EC) No 1049/2001 and Article 4(1)(b) of that regulation.

#### 5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European 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*

[Redacted signature area]

Enclosures: (3)