Brussels, 14.6.2024
C(2024) 4289 final

Mr Arun Dohle

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 – EASE 2023/6161

Dear Mr Dohle,

I refer to your email of 27 October 2023, registered on the same day, in 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 (hereafter ‘Regulation (EC) No 1049/2001’).

Please accept our apologies for the delay in handling your request.

1. SCOPE OF YOUR REQUEST

In your initial application of 18 October 2023, you requested access to, I quote:


2) The reply of 27 février 2023 related to ‘le cri d’alarme sur le trafic d’enfants et la corruption’ adressé aux Responsables de l’Union Européenne.’

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The Directorate-General for Justice and Consumers (‘DG JUST’) of the European Commission (the ‘Commission’) identified the following documents as falling under the scope of your request:


In its initial reply dated 27 October 2023, DG JUST:

- Provided wide partial access to documents 1 and 2 with only personal data being redacted based on the exception laid down in Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position regarding document 1 essentially claiming that, I quote:

‘You have sent us the letter of the European Commission to the Romanian adopties (Racines & Dignite) of 16 March 2023, but that was not what we requested. We requested the reply of the Racines & Dignite (Romanian adoptees) to the European Commission, also dated 16 March 2023.’ You further elaborate that you request this document ‘with the Ares registration number on it.’ Therefore, the scope of the confirmatory review is circumscribed to this part of your request.

As regards document 2, DG JUST granted you wide partial access to it at the initial stage and this document has been removed as an enclosure to this decision. However, please note that subsequent to this request, this document will be published on the European Commission’s Electronic Access to Commission Documents (‘EASE’) public portal³.

The arguments that you put forward in support of your position will be addressed in the corresponding sections below.

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 review of the reply given by the Directorate-General concerned at the initial stage.

As a preliminary remark, I would like to clarify certain aspects with respect to the scope of your request.

After careful consideration of the phrasing of your request, the Secretariat-General considers that document 1 was wrongfully identified as document falling under the scope of your request at initial level. This document is a letter sent by the Commission to

Racines & Dignité and not their reply to the Commission. Therefore, document 1 is removed from the scope of your request and will not be assessed in the review.

The Secretariat-General identified the following document as falling under the scope of your request:

- Letter from Racines & Dignité addressed to the European Commission, 16.03.2023, reference Ares(2023)2026974 (‘document 3’).

In addition, I would like to clarify some of the doubts you have expressed regarding the registration of document 3 in Commission’s official repository of documents, HAN.

In your confirmatory application, you state that, I quote:

‘The reason we request this public access to this document is we have a reason to believe it was not registered by your organisation. It is in the public interest to know if this is the case. European citizens have a right to a good administration, with good administrative behavior, transparency and ethics. Hereby, we request public access to that letter of Racines & Dignite (Romanian adoptees) with the Ares registration number on it.’

Please note that document 3 was sent to the Commission as an attachment to an email of 17 March 2023. This email was a reply to a third-party consultation in another access to documents request and, when uploaded to Commission’s EASE system for the handling of access to documents request, the email and its attachments automatically received the reference Ares(2023)2026974. However, the file format MSG of the email cannot be converted into PDF, and the attachments to the email could not be extracted in order to be converted into PDF either. This did not allow for the Ares reference to be stamped on the PDF-converted versions of the email and its attachments, including document 3. However, the email in its entirety (together with its attachments) is held in the Commission’s official repository of documents, HAN, with the reference Ares(2023)2026974 with registration date 21 March 2023.

Following the review performed at the confirmatory stage, and taking into consideration the results of the consultation with the third party concerned, I can inform you that:

- wide partial access is granted to document 3, subject to redactions based on the exception of Article 4(1)(b) (protection of the privacy and integrity of natural persons) of Regulation (EC) No 1049/2001.

The detailed reasons underpinning the assessment are set out below.

2.1. Consultation of the third party

Document 3 originates from a third party, namely the group Racines & Dignité. According to Article 4(4) of Regulation (EC) No 1049/2001, ‘[a]s regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 [of Article 4 of Regulation (EC) No 1049/2001] is applicable, unless it is clear that the document shall or shall not be disclosed’.
In the context of your request, the Secretariat-General consulted the originator of the requested document regarding its possible disclosure. In reply to that consultation, the originator agreed to the disclosure of document 3, requesting however the Secretariat-General, I quote, ‘de respecter la protection des données personnelles des co-signataires de ce courrier […]’ [MACHINE TRANSLATED: to respect the protection of the personal data of the co-signatories of the document.]

2.2. Assessment of the Secretariat-General of the European Commission

The Secretariat-General has carried out an assessment taking into consideration the response to the consultation provided by the third party. Following this assessment, the Secretariat-General has concluded that partial redactions of document 3, based on the exception laid down in Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, are justified.

The reasons for this are set out below.

2.2.1. Protection of privacy and the integrity of the individual

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’.

As per settled case-law, when a request 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 (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.


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

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In the *Bavarian Lager* 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’.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person […]’.

Recital 16 of the Regulation (EU) 2018/1725 clarifies that ‘(…) [t]o determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person, to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments’.

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’.

Document 3 contains several categories of personal data, such as names, surnames, functions and career history of staff members of the European Commission, from which their identity can undoubtedly be deduced. Document 3 contains defamatory allegations against these staff members of the European Commission. Disclosure of the redacted personal data would lead to the identification of the persons against whom such defamatory allegations were raised. Moreover, document 3 contains personal data such as names and surnames of other natural persons that cannot be considered as public figures acting in a public capacity.

The names of the persons concerned in this case, as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 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

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7 European Commission v The Bavarian Lager judgment, cited above, paragraph 59.

8 Judgment of the Court of Justice of 20 May 2003, Rechnungshof and Others v Österreichischer Rundfunk, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

9 European Commission v The Bavarian Lager judgment, cited above, paragraph 68.
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) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (ClientEarth), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data. This is also clear from Article 9(1)(b) of Regulation (EU) 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) 2018/1725, the European Commission has to examine the further conditions for the 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 weighed the various competing interests.

To establish the necessity to have the said personal data transmitted to you, you argue that, I quote:

‘The reason we request this public access to this document is that we have reason to believe it was not registered by your organisation. It is in the public interest to know if this is the case. European citizens have a right to a good administration, with good administrative behavior, transparency and ethics.’

As explained above, and as proved by the partial disclosure of this document, these allegations are untrue. In any case, the Secretariat-General considers that this argument cannot justify the transmission of the personal data at stake since abstract and generic arguments are not sufficient to establish the necessity of the transmission of personal data.

Please note that a ‘specific purpose in the public interest’ is not any general purpose. In this context, it must be also recalled that, as ruled by the General Court, ‘general considerations’, such as the requestor’s belief that the personal data concerned represent a public interest, are insufficient to warrant a transmission of these data. Likewise, so

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are – according to the Court of Justice – general references to ‘transparency’. Moreover, according to the case-law in the *Psara* judgment, abstract and general references to possible wrongdoings cannot justify the need for the transmission of the personal data.

The fact that to further substantiate the necessity to have the personal data concerned transmitted, you put forward arguments of a general nature, proves that the purpose for which you wish to obtain these data cannot be considered as ‘specific’ within the meaning of Article 9(1)(b) of Regulation (EU) 2018/1725.

Indeed, as mentioned above, for an institution to be able to weigh up the various interests of the parties concerned by a request to transmit personal data, the necessity of such a transfer must be established by means of providing an ‘express and legitimate justification or any convincing argument’.

Furthermore, the General Court specified that, apart from establishing a specific purpose in the public interest, the applicant must explain particularly how the disclosure of the personal data is the most appropriate measure to achieve that specific purpose.

You neither demonstrate the existence of a ‘specific’ purpose nor demonstrate that the transfer of personal data you request is the most appropriate of the possible measures for attaining your objective and that it is proportionate to that objective, by providing express and legitimate reasons to that effect.

Therefore, as regards the justification of your request for having the personal data concerned transmitted to you, in the Secretariat-General’s opinion, the above-mentioned arguments do not demonstrate the necessity for transmission of these personal data, as the Secretariat-General does not find the purpose of this transmission in the alleged public interest to be sufficiently specific, as required by Article 9(1)(b) of Regulation (EU) 2018/1725.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the Commission must assess the further conditions for the 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 Commission must examine if 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 weighed the various competing interests. As already explained above, in the present case, the condition enshrined in Article 9(1)(b) of Regulation (EU) 2018/1725 is not fulfilled.

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13 Judgment in *ClientEarth v European Food Safety Authority*, cited above, paragraphs 51-52.


15 *European Commission v The Bavarian Lager* judgment, cited above, paragraph 78.

16 *Hans-Wilhelm Saure v European Commission* judgment, cited above, paragraphs 36-37.
Consequently, the Secretariat-General considers that a necessity to have the said personal data transmitted to you for a specific purpose in the public interest – within the meaning of Article 9(1)(b) of Regulation (EU) 2018/1725 – has not been established.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the 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, especially in view of the defamatory nature of the allegations contained in document 3.

Consequently, the Secretariat-General concludes that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the withheld 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 the disclosure of the personal data concerned.

3. **OVERriding Public Interest in Disclosure**

Please note that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

4. **Partial Access**

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, the Secretariat-General has considered the possibility of granting partial access to the document requested.

As explained above, wide partial access is granted to document 3.

5. **Reuse**

Please note that the document originating from the third party (document 3), is disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released document without the agreement of the originator, who may hold an intellectual property right on it. The European Commission does not assume any responsibility from this document’s reuse.

Furthermore, the information and views set out in this document are those of the third-party author and do not reflect in any way the official opinion and position of the European Commission.

As regards document 2 to which DG JUST provided wide partial access in its initial reply, please note that you may reuse this document, which has been produced by the European Commission, based on the Commission Decision on the reuse of Commission documents. You may reuse this document free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not
distort the original meaning or message of the document. The Commission does not assume liability stemming from the reuse.

6. **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,

![Certified Copy]

Enclosures: 1

For the Commission
Ilze JUHANSONE
Secretary-General