



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B – Institutional and Administrative Policies

Brussels, **19 JAN. 2015**
SG.B4/MK/MF – sg.dsg2.b.4(2015)183058

By registered mail:

Mr Arun Dohle
Reimserstrasse 47 D
D – 52074 Aachen

Copy by e-mail: ask+request-1437-d3a60140@asktheeu.org

Subject: Your applications for access to documents - GestDem 2014/5080 and 5081

Dear Mr Dohle,

I refer to your e-mail dated 9 August 2014, registered on 29 October 2014, in which you introduce a request for access to documents, registered under the above-mentioned reference numbers¹, in accordance with Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereinafter Regulation 1049/2001).

1. SCOPE OF YOUR REQUEST

You request access to *[a]ll correspondence, including briefing notes, sent by Against Child Trafficking to the European Commission (Catherine Day and Simon Mordue), including any documents related to follow-ups. Period 2009 – now.*

The Secretariat-General of the Commission has asked the Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL) to deal with the part of your request covering *documents related to follow-ups.*

Consequently, this decision only concerns *all correspondence, including briefing notes, sent by Against Child Trafficking to the European Commission (Catherine Day and Simon Mordue). Period 2009 – now.*

¹ The request was split into two *Gestdem* numbers for internal administrative reasons, for the purpose of processing the request.

² Official Journal L 145, 31.05.2001 p. 43.

I understand that your request covers the correspondence from *Against Child Trafficking*, addressed to the Secretary-General and Simon Mordue in their official capacities, containing specific allegations against third organisations.

I have identified the following documents (including, where applicable, their attachments) as falling within the scope of your request:

1. Access to Documents request: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking) - GestDem 2013-1160 - Confirmatory application - Ares(2013)2715344, dated 21 July 2013;
2. Confirmatory reply to Access to Documents: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking) - GestDem 2013-1160 - Confirmatory reply - Ares(2013)3243669, dated 15 October 2013;
3. Access to Documents request: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking) - GestDem 2013-3347 - Confirmatory application - Ares(2013)2741278, dated 20 July 2013;
4. Confirmatory reply to Access to Documents: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking) - GestDem 2013-3347 - Confirmatory request - reply - Ares(2013)3081555, dated 19 September 2013;
5. Access to Documents request: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking) - GestDem 2013-1160 - Confirmatory application - Ares(2013)2834584, dated 31 July 2013;
6. Confirmatory reply to Access to Documents: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking) - GestDem 2013-1160 - Confirmatory reply - Ares(2013)3243669, dated 15 October 2013;
7. Access to Documents request: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking) - GestDem 2013-3738 - Confirmatory application - Ares(2013)2841702, dated 1 August 2013;
8. Confirmatory reply to Access to Documents: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking) - GestDem 2013-1160 - Confirmatory reply - Ares(2013)324366, dated 15 October 2013;
9. Access to Documents request: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking Ask the EU) - GestDem 2013-4481 - Confirmatory application - Ares(2013)3216871, dated 9 October 2013;
10. Confirmatory reply to Access to Documents: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking+Ask the EU) - GestDem 2013-4481 - Confirmatory reply - Ares(2013)3298275, dated 21 October 2013

11. Access to Documents request: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking Ask the EU) - GestDem 2013-4539 - Confirmatory application - Ares(2013)3438035, dated 7 November 2013;
12. Confirmatory reply to Access to Documents: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking+Ask the EU) - GestDem 2013-4539 - Confirmatory reply - Ares(2014)1573568, dated 16 May 2014
13. Access to Documents request: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking Ask the EU) - GestDem 2014-1462 - Confirmatory application - Ares(2014)1509345, dated 11 April 2014;
14. Confirmatory reply to Access to Documents: AD - Appeal DOHLE Arun (A.C.T. – Against Child Trafficking+Ask the EU) - GestDem 2014-1462 - Confirmatory reply - Ares(2014)1807924, dated 3 June 2014;
15. E-mail from Mr Dohle to Mr Mordue, "From Arun Dohle- ACT" – Ares(2014)15089955, dated 9 May 2009;
16. Reply from the Fule Cabinet to Mr Dohle, "From Arun Dohle- ACT" – Ares(2014)15089955, dated 12 May 2009;
- 17. E-mail from Against Child Trafficking to Ms Day, "Social Fund/XXX", dated 3 October 2012;**
- 18. E-mail exchange between Ms Day and Mr Mordue, dated 4 October 2012;**
- 19. E-mail exchange between Ms Day and Mr Richelle, dated 15 November 2012;**
- 20. E-mail exchange between Mr Richelle, Mr Mordue and DG EMPL officials, "Project in Romania", dated 28 November 2012;**
- 21. E-mail exchange between Ms Day and Mr Mordue, "FW: CONFIDENTIEL – Note de dossier", dated 19 December 2012;**
- 22. E-mail from Against Child Trafficking to Mr Mordue, "old file", dated 22 January 2013;**
- 23. E-mail exchange between Mr Mordue and officials of DGs ELARG and EMPL, "ESF project in RO", dated 3 - 24 April 2013;**
- 24. E-mail from Mr Mordue to Mr Richelle, "ESF contract", dated 28 May 2013;**
- 25. E-mail exchange between Against Child Trafficking and Mr Mordue, "Note meeting with DG EMPL", dated 12 November 2013;**
26. E-mail from Mr Dohle to Ms Day, dated 7 August 2014.

Having examined these documents, I note that documents 1-14, 15, 16 and 26 have been received from or addressed to you, and are consequently in your possession. In addition, document 26 contains illegally obtained material or refers thereto. These documents are therefore considered to fall outside the scope of your application. Consequently, this decision only covers documents 17-25, displayed in bold above.

Documents reflecting the follow-up given to the messages received from Against Child Trafficking, for which you have also expressed an interest, will be dealt with in the second part of the initial reply to your request, by DG EMPL, and therefore also fall out of the scope of this reply by Directorate B of the Secretariat-General.

2. ASSESSMENT UNDER REGULATION 1049/2001

2.1. Third-party consultation

As parts of its assessment, Directorate B of the Secretariat-General has, in accordance with Article 4(4) of Regulation 1049/2001, consulted the third party author of (parts of the) documents, private organisation *Against Child Trafficking*, on the possible disclosure of its correspondence to the European Commission.

In response to this consultation, you replied by e-mail dated 19 December on behalf of *Against Child Trafficking* that that organisation did not have any objections to the release of the documents requested.

Nevertheless, only partial access can be granted to the documents requested, as parts thereof fall under the exceptions of Article 4(1)(b) (protection of the privacy and integrity of the individual), 4(2)(1) (protection of commercial interests) and 4(3) (protection of the decision-making process) of Regulation 1049/2001, as explained below.

2.2. Protection of the privacy and integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that *access to documents is refused where disclosure would undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*.

In its judgment in the *Bavarian Lager* case³, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001⁴ (hereinafter the Data Protection Regulation) becomes fully applicable.

Article 2(a) of Data Protection Regulation 45/2001⁵ ("the Data Protection Regulation") provides that '*personal data*' shall mean any information relating to an identified or

³ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

⁴ 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, Official Journal L 8 of 12.1.2001

identifiable person [...]. As the Court of Justice confirmed in case C-465/00 (Rechnungshof)⁶, there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of “private life.

Documents 17, 18, 19, 20, 21, 23, 24 and 25 contain the names, signatures and/or initials of individuals who do not occupy any senior management position, and whose names have not yet been made public in the context referred to in the documents.

Documents 17, 18, 19, 20, 21, 22, 23, 24 and 25 contain serious allegations against private and public organisations and, indirectly, or directly (in the case of documents 22, 23 and 24) against their employees or representatives, or enable the identities of these employees or representatives and the allegations against them to be easily retraced.

The corresponding parts of the above-mentioned documents undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation 45/2001.

According to Article 8(b) of Regulation 45/2001, 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 that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. The respective parts of the documents have therefore been redacted.

If you wish to receive the personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

For the same reasons, the subjects of the correspondence contained in Documents 17, 18 and 19 listed above and certain references to private organisations contained in these subject descriptions are not disclosed, as this would potentially prejudice the privacy and integrity of the employees of the private organisations concerned.

Indeed, as indicated above, some of the undisclosed (parts of the) documents requested contain serious allegations against the above-mentioned private organisations. Given the limited number of staff of the latter organisations, the identity of the employees thereof could be identified from the documents concerned. The reasons for the non-disclosure cannot be further elaborated here, as this would prejudice these very rights protected by Article 4(1)(b) of Regulation 1049/2001.

⁵ 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, Official Journal L 8 of 12.1.2001, p. 1.

⁶ Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

As the need for obtaining the personal data concerned has not been substantiated based on the information available, and there is no reason to assume that the privacy and integrity of the individuals concerned would not be prejudiced by the release of these data, I consider that access to these personal data has to be refused pursuant to the exception defined in Article 4(1)(b) of Regulation 1049/2001.

3. PROTECTION OF COMMERCIAL INTERESTS

Article 4(2), first indent of Regulation 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.*

As indicated above, the redacted parts of documents 17, 18, 19, 20, 21, 22, 23, 24 and 25 contain or refer to serious allegations against private organisations or would enable such allegations to be inferred. There is a real and non-hypothetical risk that release of the respective parts of the documents would undermine the reputation of the organisations concerned, thereby harming the commercial interests protected by Article 4(2), first indent of Regulation 1049/2001. It is not possible to elaborate the above-mentioned risks resulting from the release of the redacted parts of the above-mentioned documents in more detail, as this would undermine the very interests protected by the exception in Article 4(2), first indent of Regulation 1049/2001.

Documents 17, 18, 19, 20, 21, 22, 23 and 24 contain references to the name of a private organisation which obtained a grant co-financed under the European Social Fund. Given the context in which this name appeared in the documents, the release thereof, if wrongly interpreted, would potentially damage the reputation of the private organisation concerned. For the same reason, those parts of the documents which do not explicitly identify the private organisation concerned but which do enable one to identify that organization from the remainder of the documents, have been removed from the documents. Similarly, the subject matter of the documents has been partially redacted from the list of documents provided under point 1 above.

Consequently, the respective parts of the documents have to be protected based on the exception of Article 4(2), first indent of Regulation 1049/2001, as their disclosure would undermine the commercial interests protected by Article 4(2), first indent of Regulation 1049/2001.

4. PROTECTION OF THE DECISION-MAKING PROCESS

Article 4(3) of Regulation 1049/2001 provides that:

Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

As explained above, the redacted parts of documents 17, 18, 19, 20, 21, 22, 23, 24 contain serious allegations against private and public organisations, or would enable these allegations, contained in other (parts of the) documents subject to your access-to-documents request, to be traced back to those private and public organisations. Release of these parts of the documents through a reply to an access-to-documents request under Regulation 1049/2001 would seriously harm external entities' trust in the Commission's proper treatment of its exchanges with these entities. This, in turn, would seriously undermine the Commission's capacity to effectively carry out its functions and to make decisions in the meaning of Article 4(3), first indent of Regulation 1049/2001. Having regard to the serious nature of the allegations contained in the documents, these risks are real and reasonably foreseeable and not purely hypothetical.

Should it be considered that the said parts of the documents do not fall under the protection of Article 4(3), first subparagraph (*quod non*), I consider, in the alternative, that the redacted parts of the documents referred to above should nevertheless be withheld pursuant to Article 4(3), second subparagraph of Regulation 1049/2001. Some of these parts reflect opinions addressed specifically to the Commission for its internal use. Others contain opinions for internal use, exchanged between Commission staff as part of preliminary deliberations on the follow-up to be given to the serious allegations contained in (some of) the documents requested by you. As explained also above, putting such documents into the public domain would seriously undermine the trust of the external entities concerned in the way the Commission handles sensitive information received from or concerning external entities, and hence the Commission's decision-making process in the meaning of Article 4(3) of Regulation 1049/2001.

5. NO OVERRIDING PUBLIC INTEREST

The exceptions laid down in Article 4(2) and Article 4(3) of Regulation 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.

Your confirmatory application does not include any arguments supporting the existence of an overriding public interest in releasing the documents requested. Nor have I been able to identify any public interest capable of overriding the interests protected by Article 4(2), first indent and Article 4(3) of Regulation 1049/2001. Indeed, I consider that the preponderant interests to protect in this case are the commercial interests and the decision-making process referred to above.

The fact that the documents to which you ask to obtain wider access relate to administrative matters and not to a legislative act, for which the Court of Justice has acknowledged the

existence of wider openness,⁷ provides further support to this conclusion. So does the existence of appropriate procedures for communicating, to the responsible authorities, the allegations of the type reflected in the documents.

Please note also that the exception of Article 4(1)(b) does not envisage the possibility for the private interests protected therein to be overridden by any public interest in disclosure.

6. NO PARTIAL ACCESS

In accordance with Article 4(6) of Regulation 1049/2001 I have also examined the possibility of granting wider partial access to the documents requested. I take the view, however, that no meaningful wider partial access is possible without undermining the interests described above.

In case you would disagree with the above assessment, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to introduce a confirmatory application requesting the Commission to review this 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-4
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu.

Yours sincerely,



Marianne Klingbeil

Encl (9): documents to which partial access is granted

⁷ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-139/07 P, *Commission v Technische Glaswerke Ilmenau GmbH*, paragraphs 53-55 and 60; Judgment of the Court (Grand Chamber) of 29 June 2010, *Commission v Bavarian Lager*, paragraphs 56-57 and 63.