



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Director-General

Brussels,
JUST/C1(2016)2572274s

By registered mail with receipt:

Mr James Panichi
Politico
Rue de la Loi 62
1040 Brussels
Belgium

e-mail:

ask+request-2398-1db1f680@asktheeu.org

Dear Sir,

Subject: Your application for access to documents – Ref GestDem No 2016/0285 – second batch of documents

I refer to your e-mail dated 04/01/2016 in which you make a request for access to documents, registered on 22 January 2016 under the above mentioned reference number.

In this request you refer to "correspondence between the Commission's Paul Nemitz and FRA."

Due to the large amount of documents identified I had already replied to your request with letter of 8 March 2016 explaining that I would have to send the documents that are relevant to your request and that can be given access to in several batches unless you indicated a possibility to narrow down your request, for instance as regards the period concerned. With that letter I sent you documents of 2012 identified to fall into the scope of your request. Since I have so far not received an answer from you that would allow narrowing down your request I proceed as indicated in my letter of 8 March 2016 and am now replying to your request in view of the documents of 2013 identified to fall into its scope.

I have reviewed all relevant documents in the light of your request to identify documents sent to or from Commission official Paul Nemitz to or from the European Agency for Fundamental Rights (FRA). Please note that I have not included newsletters, which my services had already mentioned in an earlier letter of 1 March 2016 and of which they had included three examples. These newsletters that have been circulated to its stakeholders contain summaries of FRA news. These news events (but not their summaries) are available on FRA's website¹. However, the newsletters contain personal data of FRA contact persons which would need to be individually removed to ensure the protection of personal data as

¹ <http://fra.europa.eu/en/news-and-events>.

required by Regulation (EC) 45/2001. Again I would like to ask you to indicate if you require these newsletters as well.

As regards these documents identified in Annex 1, please note that the documents listed fall into three categories: those that full access is given to, those that partial access is given to and those to which access must be refused as explained below.

1. Documents that full access is given to

I enclose a copy of/link to the following documents as listed in Annex 1:

4. *Declaration of interest – attachment to doc 2 - Declaration of Interest_EN*
8. *External Evaluation of the FRA recommendations of the Management Board - ATTACHMENT - Final Report FRA External evaluation_EN pdf*
10. *FRA - Definitive reply to the ECA 2012 RAS - ATTACHMENT - FRA_2013_01560000_FR_TRA*
11. *FRA - Definitive reply to the ECA 2012 RAS - ATTACHMENT - FRA reply 2012*
21. *FRA Focus Data protection authorities' independence funding and staffing - ATTACHMENT - FRA-2013_Focus_DPA-independence-funding-staffing*
26. *FRA presents new Handbook on European law relating to asylum borders and immigration - attachment - handbook-law-asylum-migration-borders_en*
28. *FRA Survey on discrimination and hate crime against Jews and Annual antisemitism update -attachment - FRA-2013_Antisemitism-update-2002-2012_embargo*
available at: http://fra.europa.eu/sites/default/files/fra-2013_antisemitism-update-2002-2012_web_0.pdf
30. *FRA Survey on discrimination and hate crime against Jews and Annual antisemitism update - attachment - FRA antisemitism survey technical report*
available at: http://fra.europa.eu/sites/default/files/fra-2013-antisemitism-survey-technical-report_en.pdf
31. *FRA Survey on discrimination and hate crime against Jews and Annual antisemitism update - attachment - FRA antisemitism survey report*
available at: http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hate-crime-against-jews-eu-member-states-0_en.pdf
32. *FRA Survey on discrimination and hate crime against Jews and Annual antisemitism update - attachment - FRA antisemitism factsheet*
available at: http://fra.europa.eu/sites/default/files/fra-2013-factsheet-jewish-people-experiences-discrimination-and-hate-crime-eu_en.pdf
34. *FRA thematic situation report on racism intolerance and extremism – embargoed*

final draft - attachment - FRA-2013_Thematic-Situation-Report-3_embargo

available at: http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf

36. *Fundamental Rights Platform meeting 25-26 April Vienna - attachment 2013-FRP_Programme_EN*
38. *FW FRA antisemitism survey embargoed advance copy - attachment - FRA-2013_Antisemitism-update-2002-2012_embargo*
(same document as document 28 above)
39. *FW FRA antisemitism survey embargoed advance copy - attachment - FRA antisemitism technical report_embargo*
(same document as document 30 above)
40. *FW FRA antisemitism survey embargoed advance copy - attachment - FRA antisemitism factsheet_embargo*
(same document as document 32 above)
41. *FW FRA antisemitism survey embargoed advance copy - attachment - Antisemitism report main results_embargo*
(same document as document 31 above)
45. *Letter by the German Central Council for Sinti and Roma, attachment - Kjaerum_20130515*

As indicated documents 28, 30-32 are identical to documents 38-41. All of them are publicly available under the links listed above. Furthermore, document 34 is publicly available under the abovementioned link.

Disclaimer:

Please note that these documents were received by the Commission from the European Agency for Fundamental Rights (FRA). They cannot be re-used without the agreement of the originator, who holds a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

2. Documents that partial access is given to

I enclose a copy of the following documents, which have been partially redacted:

2. *Declaration of interest, e-mail of 4/4/2013*
3. *Declaration of interest- attachment to doc 2 -Declaration_Nemitz*
5. *Demos Report on democracy in the EU - concerns over Greece and Hungary, e-mail of 27/9/2013*
6. *External Evaluation of the FRA recommendations of the Management Board, e-mail of 6/6/2013*
7. *External Evaluation of the FRA recommendations of the Management Board -*

- ATTACHMENT - Letter to VP Reding_external evaluation*
9. *FRA - Definitive reply to the ECA 2012 RAS, e-mail of 1/10/2013*
 12. *FRA - Definitive reply to the ECA 2012 RAS - ATTACHMENT - 2013-09-30 Mr Nemitz Note re FRA reply to ECA 2012 RAS*
 13. *FRA - Information on the Agencys budgetary issues, e-mail of 20/2/2013*
 14. *FRA - Information on the Agencys budgetary issues - ATTACHMENT - REF00199_Note For Att of Mr Nemitz_EC DG JUST C*
 15. *FRA - Information on the Agencys budgetary issues (5)*
 16. *FRA - Information on the Agencys budgetary issues (5)- ATTACHMENT - REF00987_Note For Att of Mr Nemitz_EC DG JUST C*
 17. *FRA Annual report 2012 Highlights and Annual activity report 2012, e-mail of 13/6/2013*
 18. *FRA Annual report 2012 Highlights and Annual activity report 2012 - ATTACHMENT - Nemitz Paul_13 06 13*
 19. *FRA Focus Data protection authorities' independence funding and staffing*
 20. *FRA Focus Data protection authorities' independence funding and staffing - ATTACHMENT - Letter_FRA-2013_Focus_DPA*
 22. *FRA presents its new LGBT survey report - embargoed copy*
 23. *FRA presents its new LGBT survey report - embargoed copy - attachment - Nemitz, Paul_08.05.13*
 24. *FRA presents new Handbook on European law relating to asylum borders and immigration*
 25. *FRA presents new Handbook on European law relating to asylum borders and immigration - attachment - Nemitz, Paul_10.06.13*
 27. *FRA Survey on discrimination and hate crime against Jews and Annual antisemitism update*
 29. *FRA Survey on discrimination and hate crime against Jews and Annual antisemitism update - attachment – Pnemitz*
 33. *FRA thematic situation report on racism intolerance and extremism – embargoed final draft*
 35. *Fundamental Rights Platform meeting 25-26 April Vienna*
 37. *FW FRA antisemitism survey embargoed advance copy*
 42. *Intention to launch a written procedure Amendment of Annual Work Programme 2013 and Budget transfer - attachments - NOTE for approval of written procedure_EN*
 43. *Intention to launch a written procedure Amendment of Annual Work Programme*

2013 and Budget transfer

- 44. *e-mail: Letter by the German Central Council for Sinti and Roma*
- 47. *Mission to Washington - attachment - Director FRA Morten Kjearum 21-23 October*
- 48. *New FRA report on Inequalities and multiple discrimination in access to and quality of healthcare*
- 49. *New FRA report on Inequalities and multiple discrimination in access to and quality of healthcare- attachment - Nemitz, Paul_08.03.13*
- 51. *Request for an opinion on the EU Fundamental Rights Agency's draft Annual Work Programme 2015*
- 52. *Request for an opinion on the EU Fundamental Rights Agency's draft Annual Work*
- 56. *Working group on hate crime*
- 57. *Working group on hate crime - attachment - Nemitz, Paul_04.07.13*
- 58. *Written procedure Amendment of Annual Work Programme 2013 and Budget transfer Programme 2015 - attachment - Nemitz, Paul_05.11.2013.pdf*
- 65. *Written procedure on the MBs intention to extend the term of office of the Director*
- 69. *RE: FRC 2013 on Hate Crime (e-mail by Paul Nemitz of 04/10/2013)*

These documents to which you have requested access contain personal data. Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its 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 (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 data².

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable³. According to Article 8(b) of this Regulation, 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.

I 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. Therefore, I am disclosing the documents requested expunged from this personal data.

² Official Journal L 8 of 12.1.2001, p. 1

³ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

If you wish to receive these personal data, I invite you to provide me 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.

3. Documents to which access must be refused

I regret to inform you that no access can be given to the following documents:

1. *Anti-semitism, e-mail of 17/12/2013*
46. *RE Mission to Washington 18-10-2013, e-mail of 18/10/2013*
50. *RE Working Definition of Antisemitism, e-mail of 12/12/2013*
53. *Request for an opinion on the EU Fundamental Rights Agency's draft Annual Work Programme 2015 - attachment - Draft AWP2015[1]*
54. *Rule of Law in the EU*
55. *Rule of Law in the EU - attachment - Safeguarding the rule of law in the European Union*
59. *Written procedure Amendment of Annual Work Programme 2013 and Budget transfer- attachment - Written procedure _EN*
60. *Written procedure Amendment of Annual Work Programme 2013 and Budget transfer- attachment - Annex I Explanatory Note _EN*
61. *Written procedure Amendment of Annual Work Programme 2013 and Budget transfer - attachment -Annex V Amendment AWP2013_fiche 3_3_9 _EN*
62. *Written procedure Amendment of Annual Work Programme 2013 and Budget transfer - attachment -Annex II 2013-02 MB Budgetary Transfer_Data _EN*
63. *Written procedure Amendment of Annual Work Programme 2013 and Budget transfer - attachment - Annex IV Amendment AWP2013_fiche 3_1_2 _EN*
64. *Written procedure Amendment of Annual Work Programme 2013 and Budget transfer - attachment - Annex III AWP2013_amended financing decision _EN*
66. *Written procedure on the MBs intention to extend the term of office of the Director - attachment Written procedure extension contract Director _EN*
67. *Written procedure on the MBs intention to extend the term of office of the Director - attachment - Report on future needs and requirements of FRA _EN*
68. *Written procedure on the MBs intention to extend the term of office of the Director - attachment - Letter to Chair Maija Sakslin _EN*

Documents 1, 46, 50, 53-55, 59-64 and 66 referred to in Annex 1 originate from a third party, the European Agency for Fundamental Rights (FRA). The originator of the document has been consulted and taken the view that no access should be given to these documents, as disclosure is prevented by exceptions to the right of access laid down in Article 4 (1) (a), third indent of Regulation (EC) No 1049/2001, i.e. that their disclosure would undermine the protection of international relations and Article 4 (3) of Regulation (EC) No 1049/2001, i.e. that the

disclosure of the documents would seriously undermine the institution's decision-making process. Concerning the abovementioned documents from the FRA you remain, of course, entitled to contact FRA directly in view of access to these documents.

As regards *documents 67 and 68* I cannot give access, as the disclosure of the documents would seriously undermine the institution's decision-making process, in the sense of Article 4 (3) of Regulation (EC) No 1049/2001.

4. Confirmatory application

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the positions taken in this letter. 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 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

5. Next steps

In our letter of 1 March my services asked you whether you could narrow down the scope of your request (i.e. the subject matter(s) and/or timeframe covered), so as to reduce it to a more manageable amount of documents. So far they have not received any reply. In the absence of a reply by the time-limits of Regulation 1049/2001, I will unilaterally apply a method of consecutively covering the documents you referred to, i.e. sending you the remaining documents in batches at regular intervals. In total the search will cover all years during which Paul Nemitz as Member of the Management Board at the FRA has had communication exchanges with the European Agency for Fundamental Rights (FRA), i.e. from 2011 until today.

Disclaimer

You have lodged your application via the AsktheEU.org website. Please note that this is a private website which has no link with any institution of the European Union. Therefore the European Commission cannot be held accountable for any technical issues or problems linked to the use of this system.

Yours sincerely,



Tiina ASTOLA

Enclosure:

Annex 1: List of documents of 2013 falling into the scope of request GestDem No 2016/0285

Documents 2-27, 29, 33, 35-37, 42-45, 47-49, 51, 52, 56-58, 65, 69 as listed in Annex 1