

EUROPEAN COMMISSION
Neighbourhood and Enlargement Negotiations

The Director-General

Brussels, **28. 10. 2016**

Mr Arun Dohle
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Subject: Your application for access to documents - Ref GestDem No 2016/4392

Dear Mr Dohle,

I refer to your request for access to documents, registered on 5 August 2016 under the above mentioned reference number. Your application concerns the minutes of the Sub Committee Meetings on Justice, Freedom and Security authored by the European Commission with Montenegro. Five documents that would correspond to the description given in your application: minutes of Sub-Committee meetings of 2010, 2011, 2012, 2014 and 2015 were found. Concerning 2013, there was no Sub Committee Meeting in that year. Also, please note that the minutes of the 2016 Sub Committee Meeting have not yet been finalized.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that these documents cannot be disclosed, as disclosure is prevented by the exceptions to the right of access related to the protection of the public interest as regards international relations laid down in Article 4 (1) (a) third indent, protection of the decision-making process laid down in Article 4(3), as well as to the protection of the privacy and the integrity of the individual laid down in Article (1) (b) of this Regulation.

Article 4 (1) (a) third indent of Regulation 1049/2001 provides that "the institutions shall refuse access to a document where disclosure would undermine the protection of international relations."

The documents which you seek to obtain relate to the EU's relations with Montenegro. Please note that the Sub Committee meetings on Justice, Freedom and Security are part of the on-going dialogue with Montenegro which includes negotiating on policy development and reforms. As part of the on-going enlargement process with Montenegro, the Commission organises these meetings to allow exchanges of views between Commission officials and Montenegrin authorities, on a range of often sensitive issues in the area of justice, freedom and security. Disclosure of the above-mentioned documents would undermine the working relations of the Commission with its national counterparts

on a basis of mutual trust and would risk jeopardising the related reform process within Montenegro.

The exception set out in Article 4 (1) (a) of Regulation 1049/2001 is not subject to a public interest test.

Article 4 (3) first subparagraph 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."

The decision-making process regarding the national legislation in the area of fundamental rights, rule of law and judiciary in Montenegro is a continuous process. Continued and enhanced dialogue and cooperation with the authorities of this country, aimed at achieving compatibility with the EU requirements, is an essential part of this process. Under these circumstances, public disclosure of the , in this sensitive area covered by Chapter 23, would not only undermine the climate of trust with this country, as explained before, but would also seriously undermine the decision-making process in the context of the accession negotiations with Montenegro.

We have not identified any overriding public interest that would outweigh the protections provided for in Article 4 (3) of Regulation 1049/2001.

We have considered whether partial access could be granted to the documents requested. Partial access to the requested documents was deemed impossible as the sensitive elements are integral to it. Please note that we cannot provide you with more detailed information on these documents without disclosing their substance which is protected by the exceptions laid down in Article 4 (1) (a) third indent and Article 4 (3) first subparagraph of Regulation (EC) No 1049/2001.

Furthermore, access to these documents could not be granted since they contain information covered by the exception to the right of access, relating to the protection of the privacy and the integrity of the individual, pursuant to Article 4 (1) (b) of Regulation (EC) No 1049/2001. The deleted names of the persons concerned cannot be quoted because these are personal data whose disclosure would undermine the protection of the public interest as regards privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data, according to the above-mentioned disposition of Regulation 1049/2001.

The applicable legislation relating to the public interest as regards privacy and the integrity of the individual is Regulation (EC) No 45/2001¹ 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. When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable². 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.

¹ OJ L8, 12.01.2001, page 1.

² Judgment of the Court of Justice of the EU of 29 June 2010 in case C-28/08 P, Commission/The Bavarian Lager Co. Ltd

If you wish to receive these personal data, we invite you to provide us with arguments explaining your need for such information and demonstrating that there would be no adverse effects to the legitimate rights of the persons whose data should be disclosed.

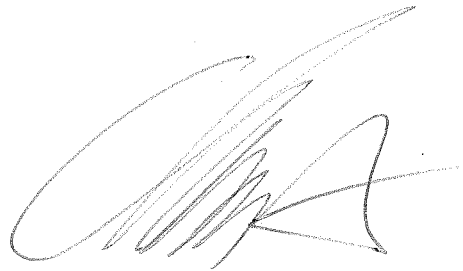
Please note that I cannot provide you with more detailed information on the redacted parts of the documents without disclosing their substance which are protected by the above-mentioned exceptions to the right of access under the Regulation.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make 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,

A handwritten signature in black ink, appearing to read 'Christian Danielsson', with a large, sweeping initial 'C'.

Christian Danielsson