

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

The Director-General

Brussels, 12 SEP. 2013
ACCESS DOCUMENTS-2010-2013
GestDem number 2013/3351
ARES save number 3042960

Dear Mr Vitsos,

**Subject: Your request for access to documents
Reference GestDem 2013/3351**

We refer to your email dated 12 July 2013 in which you make a request for access to documents, registered on the same day under the above mentioned reference number.

1. SCOPE OF YOUR APPLICATION

Your application concerns the following documents:

- #1. All versions of DPO-3398 entered in the internal website of article 4(4) of Commission Decision 597/2008.*
- #2. Versions 1, 2, and 3 of DPO-3398 that were registered for some time in the public register of article 26 of Regulation No 45/2001.*
- #3. The documents the DG RTD Data Protection Coordinator has drawn up for every single version of DPO-3398.*
- #4. The documents the DPO-3398 data controller has drawn up for every single version of DPO-3398.*
- #5. Every single 'EDPS opinion' about DPO-3398.*
- #6. Document(s) DG RTD dispatched to the Legal Services, if any, requesting an opinion about the lawfulness of the DPO-3398 personal data processing operations.*

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111
Office: ORBN 09/151 - Tel. direct line +32 229-85891

Silvia.Bojinova@ec.europa.eu

#7. The documents setting out an analysis that articles 60.4 FR, 170FR, 47.4IR (first three versions of DPO-3398) and 137.2FR and 180.1.f RAP (DPO-3398.4) is a sufficient and adequate legal basis for the personal data processing of the DG RTD external financial audits.

#8. Since by definition 'Activities and expertise, and CV' are 'intended to evaluate personal aspects relating to the data subject', the DG RTD documents setting out a reasoning why article 27(2)(b) of Regulation No 45/2001 was not applicable to DPO-3398.

#9. The 'forerunner' prior notification(s) regarding the DG RTD external financial audits prior to the first entry of DPO-3398.1 in the register (i.e. prior to April 2011).

#10. The documents the DG RTD Data Protection Coordinator had drawn up about the 'forerunner' prior notification(s) being compliant with article 25 of Regulation No 45/2001 regarding the external financial audits.

#11. The documents the data controller(s) of the 'forerunner' prior notification(s) had drawn up about their 'coverage' of the external financial audits.

#12. The documents setting out the end-user functionalities of every single 'tool'.

#13. The technical documents comprising the system specifications, system design, and system testing of every single 'tool'. Such documents are core Information Systems technical documents.

#14. The 'internal administrative act' having the nature of an 'internal decision', or equivalent, to develop every single 'tool'.

#15. The document(s) DG RTD has drawn up pursuant to article 23(1) of Regulation No 45/2001 for every single 'Processor' that had conducted an external financial audit.

#16. The documents DG RTD has drawn up pursuant to article 23(2)(b) with the instructions to 'Processors' and dispatched to them.

#17. The document(s) drawn up by DG RTD pursuant to article 23(3) for every single 'Processor' that had conducted an external financial audit.

#18. Since towards data subjects the organisation of external financial audits is an 'administrative measure', the documents DG RTD had drawn up pursuant to article 28(1) of Regulation No 45/2001.

#19. The documents setting out the lawfulness of personal data transfer from DG RTD to the Ombudsman.

#20. The documents setting out the lawfulness of personal data transfer from DG RTD to the EDPS.

#21. The documents laying down the 'internal rules' of article 6(1) of Regulation No 45/2001 authorising the change of use of personal data by way of transferring personal data from DG RTD to IDOC.

Your request is considered to fall within the scope of Regulation (EC) N°1049/2001.

As a preliminary point we would nevertheless kindly like to draw your attention to the fact that any possible concern you might have in relation to data protection issues or any supposed failure to comply with Regulation (EC) N°45/2001 (OJ L8/6 of 12.1.2001) 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 will not be discussed within the scope and procedure of Regulation (EC) N°1049/2001. This regulation only relates indeed to the public divulgation of documents which are in the possession of the institution which has received the application.

If, as a data subject, you wish to activate a remedy procedure related to the processing itself of your personal data by the Commission, I need to refer you to the remedies foreseen by Article 32 of Regulation (EC) N°45/2001 according to which "every data subject may lodge a complaint with the European Data protection Supervisor (EDPS@edps.europa.eu) if he or she considers that his or her rights under Article 286 of the Treaty have been infringed as a result of the processing of his or her personal data by a community institution or body". The Regulation also states that "the Court of Justice shall have jurisdiction to hear all disputes which relate to the provision of this regulation". These means of redress would be the appropriate routes to take and they are fully available to you as a data subject.

Therefore, we would like to kindly stress that the present reply is made within the provisions of Regulation (EC) N°1049/2001, which is not the appropriate legal instrument to address the merits of data protection issues.

2. EXAMINATION AND CONCLUSIONS

2.1. We regret to inform you that no documents exist in DG RTD in relation to Points 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18, 19, 20 and 21 of your request. Nevertheless, we provide you in chapters 2.3, 2.4 and 2.5 with helpful information regarding points 3, 5, 12 and 13.

2.2 In respect of Points 1, 2 and 4, please find enclosed:

- The 4 versions of the notification DPO-3398 (the current one in the register of the DPO is DPO-3398.4);
- The Service Specific Privacy Statement (SSPS), annexed to the notification, and sent by the Controller to data subjects;
- The note of 2 May 2011 (D/586298) from the Controller to his Processors, with its two annexes.

2.3. In respect of Point 3, the DG RTD Data Protection Coordinator (DPC) only registers in the Data Protection Officer (DPO) IT system the documents prepared by the Controller, such as the ones you have requested under points 1, 2 and 4 (notification, SSPS and instructions to Processors). Therefore, this request is devoid of purpose.

2.4. Concerning Point 5, no such document exists. The EDPS has, however, issued two letters regarding audit activities by the Commission, concluding that these are not subject to a prior check. We are pleased to enclose these two letters.

2.5. For Points 12 and 13, please find below further information regarding the three categories of ITtools referred to under the 2nd bullet point in section “4. Automated / Manual Operations” of the notification DPO-3398.4. Nevertheless, we do not have any internal documents corresponding to your request.

2.5.1. “*A specific tool allowing the exchange of lists of projects ...*”: the described IT tools refer to the SAR applications (SAR-WIKI, SAR-PAA and SAR-EAR). DG DIGIT has developed these IT tools and therefore any documents on end-user functionalities, system specifications, system design, internal administrative act, etc. related to them should be requested to DG DIGIT. We therefore do not have any of the requested documents.

2.5.2. “*A specific tool to facilitate searching and visualisation of information about participants ...*”: as far as the technical documents on this tool are concerned, we refer the applicant to the following website where this information can be found: <http://www-03.ibm.com/software/products/us/en/ibase>.

2.5.3. “*Documents related to grants and contracts may be checked using tools designed to identify text similarities ...*”: This paragraph refers to IT tools available either freely on the internet (<http://sourceforge.net/directory/os:windows/freshness:recently-updated/?q=plagiarism>) or as a paid-for service (<http://www.urkund.com/int/en/>).

2.6. Concerning Point 14, please find attached the note of Mr Silva Rodríguez to Mr Brüner of 6 January 2009 (D/586298).

2.7. In respect of Points 15, 16 and 17, we are pleased to disclose the expunged versions of the Contract Amendment N° 3 to the Framework Contracts N° FP7/2009/1, 2 and 3 with the External Audit Firms, and of the letters informing the three External Audit Firms on Contract Amendment N° 3.

The disclosure of the blackened parts of the documents is indeed prevented by the exceptions laid down in Article 4.2 first indent of the Regulation No 1049/2001: “*The institutions shall refuse access to a document where disclosure would undermine the protection of the commercial interests of a natural or legal person, including intellectual property*” and in Article 4.1 (b) of the Regulation (EC) No 1049/2001, “*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*”.

The applicable legislation in the field of personal data protection is Regulation (EC) No 45/2001 (OJ L8/6 of 12.1.2001) 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 applicable. 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. This is furthermore a particular concern as far as the documents disclosed will be published on the Internet.

However, the exception to the right of access must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly be a public interest and, secondly, outweigh the harm caused by disclosure. The arguments which you put forward in your initial application in order to support your request for access do not justify the existence of such an overriding interest in the sense of the Regulation which would outweigh the need to protect the purpose of the audits of the Commission.

Therefore, and in accordance with Article 4 (6) of Regulation N° 1049/2001, we have decided to give you partial access to the above mentioned documents expunged from all personal data.

If you wish to receive these 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.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

2.8. Concerning Points 19 and 20, DG RTD does not own such documents (you might decide to ask for these to the Ombudsman and the EDPS). By virtue of Article 7.1 of Regulation (EC) N°45/2001, "*Personal data shall only be transferred within or to other Community institutions of bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient*". Competences of the two institutions are public, and if data were sent by RTD to them, this would be in full compliance with the article referred to hereof.

2.9. In respect of Point 21, it seems to be worth to remind you that Article 7.1 of Regulation (EC) N°45/2001 is applicable, and not Article 6.1. This request is therefore devoid of purpose.

3. MEANS OF REDRESS

Your application is considered as devoid of purpose in respect to its Points 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18, 19, 20 and 21.

We have granted to you full access to the documents requested under Points 1, 2, 4 and 14, and partial access to the documents requested under Points 15, 16 and 17 of your request.

Please note that the documents cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

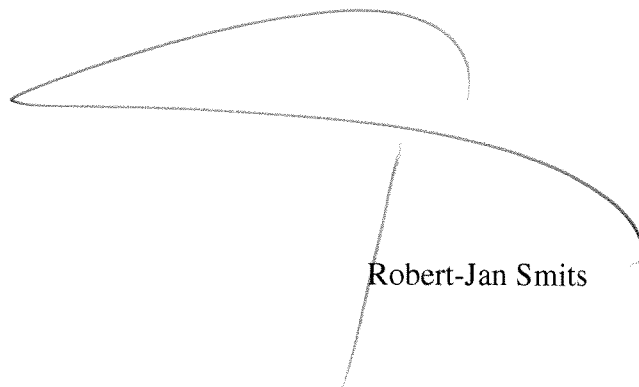
Should you wish the position of the Commission to be reviewed, then you should send a confirmatory application to the Commission's Secretary-General at the address below, confirming your initial request. You have fifteen working days to do this as from the receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General would then inform you of the result of this review within 15 working days from the date of registration of your request. You would either be given access or your request would be rejected, in which case you would be informed on how you can take further action.

All correspondence should be sent to the following address:

The Secretary-General
European Commission
B-1049 BRUSSELS
Email: SG-ACC-DOC@ec.europa.eu

Yours sincerely,



Robert-Jan Smits

CC: Ms S. Gruener (M.1); S. Bojinova, C. Moal-Nuyts, G. Lucza (R.5)
Mr M. Bellens, V. Morelli (M.1); T. Bourgeois (R.5)