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SECRETARIAT-GENERAL

Direction B  
SG-B-5  
Transparency

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Mr Tasos Ntetsikas

**Only by e-mail: ask+request-597-  
50904445@asktheeu.org**

**Subject: Confirmatory application for access to documents under Regulation (EC)  
No 1049/2001 – Ref.: GestDem 2013/3375**

Dear Mr Ntetsikas,

I refer to your email of 24 August 2013, registered on 13 September 2013, in which you require, pursuant to Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>, a review of the position taken by the Directorate-General for Networks, Content and Technology (hereafter DG CNECT) on 24 July 2013, in reply to your initial application of 26 June 2013 regarding the request of DG CNECT documents relating to Anti-fraud activities.

I also refer to the holding replies dated 4 October 2013 and 24 October 2013, regarding the extension of the time-limit for handling your application.

**1. SCOPE OF YOUR APPLICATION**

In your initial application you request access to: *"The documents describing the DG CNECT Anti-fraud Strategy, Policy and Operational Organisation, from 1/1/2010."*

DG CNECT in its initial reply of 24 July 2013 identified two documents as falling within the scope of your request:

1. *DG INFOS Anti-fraud Strategy 2011;*
2. *DG INFOS's Control and Anti-fraud Strategy: version March 2010.*

DG CNECT granted you partial access to both documents on the grounds that *"the exception on Article 4(2) third indent of Regulation 1049/2001, aimed at protecting the purpose of audits, only applies to limited parts which have been expunged in the attached copies."*

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<sup>1</sup> OJ L145, 31.05.2001, p.43.

Furthermore, refusal of full disclosure was also based on Article 4 (1) fourth indent of Regulation 1049/2001: *"Since full public access to the documents requested would weaken the commission's audit capacity, this would also have a negative impact on the budget of the EU, as the Commission would have more difficulties in detecting irregularities and cases of fraud."*

In your confirmatory application, you contest this decision by requesting full access to the aforementioned documents as well as the disclosure of a further document referred to in page 6 of document 2 above:

- *DG INFSO's Anti-fraud Measures.*

As agreed with you and confirmed by an acknowledgement email dated on 13 September 2013, this last demand was registered as a new initial request under reference number GestDem 2013-4573 and it is therefore being handled separately by DG CNECT.

## **2. EXAMINATION AND CONCLUSIONS**

After a thorough examination of the documents covered by your application, I inform you that the decision taken by DG CNECT has to be confirmed for the reasons set out below.

## **3. PROTECTION OF THE PURPOSE OF AUDITS**

Article 4(2) third indent of Regulation 1049/2001 provides that *[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the purpose of inspections, investigations and audits unless there is an overriding public interest in disclosure.*

The unveiling of anti-fraud policies and strategies, in the same way as the disclosure of audit policies or strategies, would present to the public the concrete and operational measures that the Commission has put in place to conduct these operations. This disclosure could seriously undermine the aim of those policies and strategies, allowing fraudsters to anticipate their behaviour or making it more difficult for the institutions to discover cases of fraud.

In order for these policies and strategies to be fully operational and effective, the concrete procedures, means and tools of anti-fraud and audit policies and strategies should remain confidential. If their confidential character were not to be preserved, the purpose of the anti-fraud fight would be substantially affected and its results would make it largely ineffective, even putting the entire system into question.

In what concerns the aforementioned documents, the exception aimed at protecting the purpose of audits only applies to limited parts. The disclosure of the parts that have been blanked out would reveal information about the way in which anti-fraud fight is concretely carried out in specific cases. As you have already been informed, this would seriously reduce the effectiveness of the anti-fraud and audit capacity of the Commission. Indeed, the public interest is better served by ensuring that the Commission can properly carry out audits to guarantee that public money is put to good use and that bad practices are not disclosed in a way that could lead to further examples of ill-management.

I consider that, in this case, general public access to the two referred documents would have a negative impact on the Union budget and on the audit capacity of the Commission. Therefore, the requested documents should be redacted in order to protect the Union's financial interests and to preserve the Commission's ability to carry out audits.

Consequently, full disclosure of documents 1 and 2 has to be refused pursuant to Article 4(2) third indent of Regulation 1049/2001.

#### **4. PARTIAL ACCESS**

Partial access has already been granted to the documents in question. I have examined, however, the possibility of granting further access to the requested Anti-fraud Strategies in accordance with Article 4 (6) of Regulation 1049/2001. Unfortunately, further partial access is not possible considering that the non-expunged parts of the documents are covered in their entirety by the exception under Article 4 (2), third indent of Regulation 1049/2001.

#### **5. OVERRIDING PUBLIC INTEREST**

The exception laid down in Article 4(2), first indent of Regulation 1049/2001 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.

In your confirmatory application the arguments you put forward to support your position do not justify the existence of such an overriding public interest in the sense of the Regulation. While understanding your engagement in monitoring the ethical running of the institutions, disclosure of the expunged parts would harm the Commission's efforts to ensure this is possible. In the present case, considering that large parts of the documents concerned are already being granted access to, there are no elements which could indicate the existence of an overriding public interest in the sense of the Regulation that would outweigh the need to protect the purpose of the audits of the Commission.

#### **6. MEANS OF REDRESS**

Finally, I draw your attention to the means of redress available against this decision insofar as it refuses access to certain parts of the requested contract. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,



Catherine Day