



EUROPEAN COMMISSION
SECRETARIAT-GENERAL
The Secretary General

Brussels, **16 MAI 2014**
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By registered mail to:

Mr Arun DOHLE
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Advanced copy by e-mail: ask+request-831-7ac18ab0@asktheeu.org

Subject: Your confirmatory application for access to documents under Regulation 1049/2001 – GestDem 2013/4539

Dear Mr Dohle,

I refer to your e-mail of 7 November 2013, registered on 8 November 2013, in which you lodge a confirmatory application, in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹.

I further refer to the Commission's letters of 28 November 2013 and of 19 December 2013, extending the time-limit for handling your above application. I apologise for the time it took us to handle this request and for any inconvenience this may have caused.

1. SCOPE OF YOUR REQUEST

By your initial request of 11 September 2013, you requested access to “*documents which contain a listing of the EU acquis for Justice and Home Affairs, currently dealt with in the enlargement process under Chapter 23 Judiciary and Fundamental Rights. Timeframe: 2003 - now*”.

In its answer of 17 October 2013, DG Justice sent you a detailed overview of the EU *acquis* currently covered under Chapter 23 (“Judiciary and Fundamental Rights”) of the accession negotiations.

¹ Official Journal L145, 31.05.2001, p. 43.

DG Justice further informed you that the legislation is published in the Official Journal and provided you with a link to the Directory of the EU legislation in the *Eur-Lex* database.

Moreover, DG Justice provided you in December 2013 with another document already made public on their webpage and which is regularly updated: "*EU acquis and policy documents on the rights of the child*".

By your confirmatory application, you requested the successive versions of the list of the *acquis* (per year and dating back to 2003).

2. EXAMINATION AND CONCLUSIONS

Following a renewed search in consultation with DG Enlargement and DG Justice, I confirm that the Commission has not preserved any successive versions of the list of the *acquis* per year. Indeed, those lists are established on a case by case basis and are prepared for screening exercises with candidate countries.

Chapter 23 exists since the approval of the negotiating framework in October 2005. Subsequently, the content of this chapter was established in the course of the screening process and was laid out in the screening report for Croatia adopted in June 2007. Similarly, screenings have taken place with Serbia and Montenegro.

Prior to that, the rights of the child were dealt with under the heading "political criteria" and not as part of a specific accession chapter.

I am pleased to inform you that the following documents, which reflect the *acquis* in the respective years, are partially disclosed by redacting personal data (the names of European Commission officials) in accordance with Article 4(1)b of Regulation 1049/2001:

1. AGENDA – Explanatory meeting with Croatia – 7-8 September 2006
2. Screening report Croatia – Chapter 23 Judiciary and fundamental rights – 27 June 2007
3. AGENDA – Chapter 23 Judiciary and fundamental rights – Explanatory meeting – Screening Montenegro – 26-27 March 2012
4. Screening report Montenegro – Chapter 23 Judiciary and fundamental rights – 12 November 2012
5. AGENDA – Chapter 23 Judiciary and fundamental rights – Explanatory meeting – Screening Serbia, Analytical examination of the *acquis* – 25-26 September 2013.

3. ANALYSIS

The personal data have been redacted pursuant to the exception set out in Article 4(1) (b) of Regulation 1049/2001, according to which “[t]he 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 documents to which you request access include the names of natural persons, in particular those of officials of the European Commission, which have been redacted.

In its judgment in the Bavarian Lager case², the Court of Justice has ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001³ (hereinafter the Data Protection Regulation) becomes fully applicable. The names of individuals, their addresses, their emails and other contact information, constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation. According to Article 8(b) of the Data Protection Regulation, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative⁴.

I note that in your confirmatory application you do not establish the necessity of disclosing the personal data. Furthermore, there are no reasons to assume that the rights of the individuals concerned would not be prejudiced by disclosure of the personal data, as such disclosure could lead to unsolicited contacts from outside persons. Therefore, I have to conclude that the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified.

Consequently, the disclosure of the names of natural persons referred to above has to be refused pursuant to Article 4(1) (b) of Regulation 1049/2001.

4. PARTIAL ACCESS

I have also examined the possibility of granting further partial access to the requested documents in accordance with Article 4(6) of Regulation 1049/2001. However, further partial access is not possible considering that the personal data must be redacted in their entirety.

² Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd*, European Court reports 2010, page 1-6051.

³ 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.

⁴ Judgment of the Court of Justice of 29 June 2010, *Bavarian Lager*, quoted above, paragraphs 77-78.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. 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.

Hoping to have herewith fulfilled your request, I remain,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'p. o. J. Klingler' followed by a large, stylized flourish.

Catherine Day