



EUROPEAN ANTI-FRAUD OFFICE

Directorate D: General Affairs

Director

**Mr Maximilian Henning**

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Via e-mail only

**Subject: Your application for public access to documents  
Ares(2022)4913986**

Dear Mr Henning,

We refer to your application of 2 June 2022 for public access to documents under Regulation (EC) No 1049/2001<sup>1</sup>, registered in OLAF under reference number Ares(2022)4913986<sup>2</sup>. By email dated 24 June 2022, the deadline to reply to your application was extended by 15 working days.

By email of 5 July 2022, registered under reference number Ares(2022)4953546, OLAF requested clarifications concerning the scope of your application. On the same day, by email registered under reference number Ares(2022)4997944, you confirmed the following scope of your application.

### **1. Scope of your application and identification of the relevant documents**

You have requested public access to the following documents:

- A list of all contracts related to the development of, or support or training for, the OLAF Case Management System (OCM)

OLAF has identified two documents falling within the scope of your request:

(1) List of contracts concerning OCM from 2012 to 2017, registered in OLAF under reference number Ares(2022)5169143

(2) List of contracts concerning OCM from 2018 to 2021, registered in OLAF under reference number Ares(2022)5169179.

<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43–48.

<sup>2</sup> Initially, it was registered by mistake under reference number Ares(2022)4458097.



## 2. Assessment of your application

I am pleased to inform you that partial access can be granted to documents (1) and (2), with the exception of certain information contained therein.

Some parts of the requested documents have been redacted as their disclosure is prevented by the exception to the right of access laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initials of Commission staff members not pertaining to the senior management;
- other information relating to an identified or identifiable natural person, including names of enterprises, insofar as this information allows identifying natural persons.

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that *'[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'*.

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>3</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, 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<sup>4</sup> (hereafter 'Regulation (EC) No 45/2001') becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>5</sup> (hereafter 'Regulation (EU) 2018/1725'). However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 *'requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation'*.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data *'means any information relating to an identified or identifiable natural person [...]'*.

The requested documents includes names of natural persons and other information which can identify them, as well as the name or initials of OLAF staff members not holding senior management positions. The names of natural persons as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, *'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies*

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<sup>3</sup> Judgment of 29 June 2010, *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 63.

<sup>4</sup> OJ L 8, 12.1.2001, p. 1.

<sup>5</sup> OJ L 295, 21.11.2018, p. 39.

*if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.*

Article 9(1)(b) of Regulation (EU) 2018/1725 does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur. However, in your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents.

### **3. Confirmatory application**

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting OLAF to review this position. Pursuant to Article 4 of Commission Decision 2001/937/EC, ECSC, Euratom, such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Director General of OLAF.

Any confirmatory application to OLAF should be sent to the following address:

Mr Ville ITÄLÄ  
Director General OLAF  
European Commission  
Rue Joseph II, 30  
B-1049 BRUXELLES

or by email to: [OLAF-FM-D2@ec.europa.eu](mailto:OLAF-FM-D2@ec.europa.eu)

Please, find the redacted version of the requested documents attached to the present letter.

Finally, I would like to draw your attention to this link <https://ec.europa.eu/budget/financial-transparency-system/> where you can find information on beneficiaries of funding from the EU budget implemented directly by the Commission and other EU bodies such as executive agencies or implemented indirectly by other international organisations or non-EU countries and beneficiaries of the European Development Fund.

Your attention is drawn to the privacy notice below.

Yours sincerely,

Petra KNEUER

## Annexes:

(1) List of contracts concerning OCM from 2012 to 2017, registered in OLAF under reference number Ares(2022)5169143

(2) List of contracts concerning OCM from 2018 to 2021, registered in OLAF under reference number Ares(2022)5169179

## **Privacy notice**

Pursuant to Articles 15 and 16 of Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by Union Institutions, bodies, offices and agencies and of the free movement of such data, please be informed that your personal data are stored in OLAF's electronic and paper files concerning this matter for the purposes of ensuring conformity with the requirements of Regulation 1049/2001 and Commission Decision 2001/937/EC.

The categories of your personal data being processed are identification and contact data and any other personal data provided by or to you in relation to your request. Officials within OLAF and other Commission services responsible for dealing with requests for access to documents, and third parties, within the meaning of Articles 4(4) and 3(b) of Regulation 1049/2001, and Article 5 of Commission Decision 2001/937/EC, have access to your personal data. Personal data that appear on the requested document may only be disclosed to the applicant following an assessment under Article 9(b) of Regulation (EU) 2018/1725. There is no automated decision process by OLAF concerning any data subject.

The retention period for public access to documents which do not concern OLAF investigations is a maximum of 10 years.

You have the right to request access to your personal data, rectification or erasure of the data, or restriction of their processing. Any request to exercise one of those rights should be directed to the Controller ([OLAF-FMB-DATA-PROTECTION@ec.europa.eu](mailto:OLAF-FMB-DATA-PROTECTION@ec.europa.eu)). You may contact the Data Protection Officer of OLAF ([OLAF-FMB-DPO@ec.europa.eu](mailto:OLAF-FMB-DPO@ec.europa.eu)) with regard to issues related to the processing of your personal data under Regulation (EU) 2018/1725.

You have the right to have recourse to the European Data Protection Supervisor ([edps@edps.europa.eu](mailto:edps@edps.europa.eu)) if you consider that your rights under Regulation (EU) 2018/1725 have been infringed as a result of the processing of your personal data by OLAF.

The complete privacy statements for this and all other OLAF personal data processing operations are available at [http://ec.europa.eu/anti\\_fraud](http://ec.europa.eu/anti_fraud).