

Directorate D - Legal, Resources and Partnerships
The Director

Ms Lise MØLLER SCHILDER

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Via e-mail only

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Subject: Your application for public access to documents

Dear Ms Møller Schilder,

We refer to your applications dated 9 February 2023 for public access to documents under Regulation (EC) No 1049/2001¹, registered in OLAF under reference numbers Ares(2023)1036377, Ares(2023)1036130 and Ares(2023)1035862. By email dated 15 February 2023, you indicated your postal address. This was necessary for registering and handling your request in line with the procedural requirements. By email dated 3 March 2023, we informed you that OLAF was not in a position to complete the handling of your application within the time limit of 15 working days as an extended time limit was necessary for consultations with other services.

1. Scope of your application

You have requested public access to the following documents concerning:

- *'cases reviewed by the European Anti-Fraud Office, pertaining to illegal use of EU funds [...] from the allocated funds of the Eastern Partnership programme'* in Moldova, Ukraine and Georgia.

2. Preliminary remarks

OLAF wishes to recall, firstly, that it is legally bound to treat all information it obtains during its investigations as confidential and subject to professional secrecy, in particular pursuant to Article 339 of the Treaty on the Functioning of the European Union, Article 10 of Regulation

¹ OJ L145, 31.05.2001, page 43.

(EU, Euratom) No 883/2003² and Article 17 of the Staff Regulations.

3. Assessment of your application

We regret to inform you that OLAF is not in the position to confirm or deny the existence of the documents and cases as such information would undermine the protection of purpose of inspections, investigations and audits in accordance with the third indent of the Article 4(2) of Regulation 1049/2001.

The General Court has recognised³ the existence of a general presumption of non-accessibility under which disclosure to the public under Regulation 1049/2001 of documents related to OLAF investigations could fundamentally undermine the objectives of the investigative activities both now and in the future. The presumption is based on the consideration that, to determine the scope of Regulation 1049/2001, account must be taken of relevant sectoral rules governing the administrative procedure under which the documents requested under Regulation 1049/2001 were gathered⁴. Regulation 883/2013, which governs OLAF's administrative activity, provides for an obligation of confidentiality with regard to all information gathered during investigations.

The protection of confidentiality of information in the legal framework applicable to OLAF investigations aims, on the one hand, at safeguarding the successful conduct of an investigation in the public interest and, on the other hand, at safeguarding the legitimate interests of the individuals, so that the information they provide is used only for the purposes of the investigation. The protection of confidentiality extends to closed cases. In particular, it is constant that the protection of OLAF's investigations extends to their follow-up, to the extent that that follow-up takes place within a reasonable period⁵.

4. 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 ITÁLA
Director General OLAF
European Commission
Rue Joseph II, 30
B-1049 BRUXELLES
or by email to: OLAF-FM-D2@ec.europa.eu

² OJ L 248, 18.9.2013, page 1.

³ Judgments of 26 May 2016, *IMG v Commission*, T-110/15, ECLI:EU:T:2016:322, paragraphs 28-39; and of 1 September 2021, *Homoki v Commission*, T-517/19, EU:T:2021:529, paragraph 55.

⁴ Judgments of 28 June 2012, *Agrofert Holding v Commission*, C-477/10 P, EU:C:2012:394, paragraphs 50-59; of 29 June 2010, *Commission v Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraph 55; and of 26 May 2016, *IMG v Commission*, cited above, paragraphs 29-34.

⁵ Judgments of 26 May 2016, *IMG v Commission*, cited above, paragraphs 33 and 35; of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraphs 108-113; of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, paragraph 162; and of 1 September 2021, *Homoki v Commission*, cited above, paragraph 63.

Your attention is drawn to the privacy statement below.

Yours sincerely,

Signed Electronically

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.

All documentation concerning OLAF investigations are stored in the relevant OLAF investigation files and are retained for a maximum of 15 years. Thus personal data contained in requests for public access to documents concerning OLAF investigations are retained for a maximum of 15 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-PROTxxxxxx@xx.xxropa.eu). You may contact the Data Protection Officer of OLAF (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) 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.