

## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director-General

Brussels, 23.02.2016  
GROW/G3/AP/tt  
grow.ddg2.g.3(2016)1007079

***By registered letter with  
acknowledgment of receipt***

Mr. Arun DOHLE

Viktoriastr. 46

D - 52066 Aachen

GERMANY

***Advance copy by email :***

ask+request-2452-

778bd89a@asktheeu.org

**Subject: Your application for access to documents – Ref GestDem No  
2015/6490**

Dear Mr Dohle,

We refer to your e-mail dated 9 December 2015 in which you make a request for access to documents, registered on 10 December 2015 under the above mentioned reference number, and to your e-mail dated 11 January 2016 in which you have clarified your request.

You request access to documents drafted by Mr. Pierens and related to the “*political compromises suggested by a strong Member State in the legislation providing for the concession of motorways*”.

I would like to inform you that there is no specific legislation in European Union law for the award of concessions of motorways. The concession of motorways falls within the scope of Directive 2014/23/EU<sup>1</sup> which applies to the award of concession contracts in general. Mr. Pierens was not directly concerned by the procedure of adoption of Directive 2014/23/EU and did not participate in such procedure.

However, I understand your request as concerning a State Aid case: SA.2014/N 38271/France/Plan for the Investment in Motorways on which the Commission took a decision on 28 October 2014 (doc. C(2014) 7850 final). Mr. Pierens was involved in the handling of this file, as Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (hereinafter, DG GROW) was responsible for the assessment of the public procurement aspects raised by that State Aid case.

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<sup>1</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

In that context, DG GROW has identified a number of documents relevant to your application:

Having examined these documents under the provisions of Regulation (EC) No 1049/2001<sup>2</sup>, I regret to inform you that, with one exception, your application cannot be granted for any of the documents in question.

In fact, disclosure of these documents is prevented by the exceptions to the right of access laid down in Article 4 of this Regulation.

The applicable exception is the one established by Article 4(2) second indent which states that *"The institutions shall refuse access to a document where disclosure would undermine the protection of (...) court proceedings and legal advice, (...) unless there is an overriding public interest in disclosure."*

In the present case an action was brought on 18 May 2015 before the General Court of the European Union asking for the annulment of the above-mentioned decision of the Commission of 28 October 2014. This procedure is still ongoing (case T-242/15).

Disclosure of these documents at this point in time would unduly interfere with the contradictory procedure and may undermine the rights of the parties concerned. Therefore, the exception laid down in Article 4(2) second indent of Regulation (EC) No 1049/2001 applies to these documents.

In examining your request, the possibility of granting partial access to the documents in question has been taken into consideration. However, it appears that, with the exception mentioned below, they are entirely covered by the exception referred to in Article 4(2) second indent of Regulation (EC) No 1049/2001.

Partial access can, however, be granted to one document, since this document is not entirely covered by the exception mentioned above. . The document to which a partial access can be granted is an e-mail of Mr. Pierens of 4 June 2014 and its annex. This annex relates to a defensive point on the French plan for the Investment in Motorways. This defensive point was part of a briefing for a hearing of Commissioner Barnier in the French Senate.

Notwithstanding this, the document in question contains personal data, and in particular the names of Commission's staff.

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its 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 this field is 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>3</sup>.

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<sup>2</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).

<sup>3</sup> Official Journal L 8 of 12.1.2001, p. 1

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>4</sup>.

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.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

Although Article 4 (2) lists the cases in which the rules on exceptions apply, it is also provided that in cases in which an overriding public interest in disclosure exists, access to documents may be granted. The examination of your request, however, has not led to the conclusion that such an overriding public interest exists.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission

Secretary-General

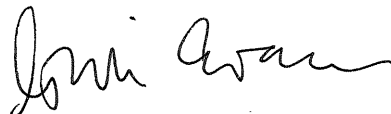
Transparency unit SG-B-4

BERL 5/282

B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Lowri Evans

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<sup>4</sup> Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.