



EUROPEAN COMMISSION

Brussels, 19.8.2016  
C(2016) 5462 final

Mr Arun Dohle  
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Germany

**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT  
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2016/3334**

Dear Mr Dohle,

I refer to your e-mail of 19 July 2016, registered on 20 July 2016, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> ('Regulation 1049/2001').

**1. SCOPE OF YOUR REQUEST**

In your initial application of 8 June 2016, addressed to the Directorate-General for Justice and Consumers (DG JUST), you requested access to:

- *All correspondence/documents related to the [following] project, including the Final Report:*

*Evaluation of the impact of the EU instruments affecting children's rights with a view to assessing the level of protection and promotion of children's rights in the EU (2009/S 107-153956).*

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

In its initial reply of 8 July 2016, DG JUST identified the following six documents as falling under the scope of your request (list of documents taken over from the initial reply):

- Document 1: Call for tenders, 8 June 2009;
- Document 2: Contract, November 2009;
- Document 3: Note on the appointment of the steering group;
- Document 4: Minutes of the kick off meeting, December 2009;
- Document 5: Message to recipients of questionnaire from contractor, 13 July 2010;
- Document 6: Final report, June 2011.

DG JUST provided the link to two documents which were already publicly available (documents nr. 1 and 6), and granted wide partial access to the remaining four documents (documents nr. 2, 3, 4 and 5), subject only to the redaction of personal data, based on Article 4(1)(b) (protection of the privacy and the integrity of the individual) of Regulation 1049/2001.

Through your confirmatory application you request a review of this position. You do not contest the redactions of personal data in four documents referred to above. However, you *do not consider* the initial reply *satisfactory* arguing that DG JUST failed to grant access to:

- *the interim report of the evaluation;*
- *documentation about the presentation of the final report, and/or any written follow-up related to the final report.*

I consider the scope of your confirmatory application limited to the latter two aspects and the redactions of personal data in four documents of the initial reply.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General or service concerned at the initial stage.

Following this review, I am pleased to inform you that the following document has been identified as falling under the scope of your confirmatory application and full access is granted to it:

- Document 7: Final interim report of July 2010 (Ref. Ares(2016)4056690).

Furthermore, limited further partial access is granted to document 2 on pages 2 and 3, as these parts do not constitute personal data in the meaning of Article 4(1)(b) (protection of the privacy and the integrity of the individual) of Regulation 1049/2001.

Please find a copy of the two documents attached.

As regards *documentation about the presentation of the final report, and/or any written follow-up related to the final report*, I regret to inform you that following a renewed search for the document(s) requested, I have to confirm that the Commission has not identified any (further) (non-public) document. Nevertheless, I would like to refer you to the public Communication of the Commission, *An EU Agenda for the Rights of the Child*, of February 2011<sup>3</sup>, which explains, on page 3 to 4, that:

*[t]his EU Agenda for the Rights of the Child is based on contributions from a wide public consultation and on the needs and concerns that children from all EU Member States expressed during a separate, targeted consultation. **It also takes into account the preliminary results of an evaluation of the impact of EU instruments affecting the rights of the child*** (emphasis added).

It becomes, therefore, clear that the findings of the evaluation fed into the elaboration of the above-mentioned Communication.

Concerning the withheld parts of documents nr. 2, 3, 4 and 5, I have to confirm DG JUST's initial reply, based on Article 4(1)(b) (protection of the privacy and the integrity of the individual) of Regulation 1049/2001.

Article 4(1)(b) of Regulation 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.*

Documents nr. 2, 3, 4 and 5 contain names, signatures, positions, telephone numbers, offices numbers and bank account details of Commission officials (not forming part of senior management) and/or of third-party representatives. These data constitute personal data within the meaning of Article 2(a) of Regulation 45/2001<sup>4</sup>, which defines personal data as *any information relating to an identified or identifiable natural person [...]; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.*

In consequence, the public disclosure of these data in the requested documents would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001.

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<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *An EU Agenda for the Rights of the Child*, COM(2011) 60 final.

<sup>4</sup> 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.

In accordance with the *Bavarian Lager* ruling<sup>5</sup>, when a request is made for access to documents containing personal data, Regulation 45/2001 becomes fully applicable. According to Article 8(b) of that 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 cumulative.<sup>6</sup> Only if both conditions are fulfilled and the processing is lawful in accordance with the requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur.

I would also like to bring to your attention the recent judgment in the *ClientEarth* case, where the Court of Justice ruled that *whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access.*<sup>7</sup> I refer also to the *Strack* case, where the Court of Justice ruled that the Institution does not have to examine by itself the existence of a need for transferring personal data<sup>8</sup>.

Neither in your initial, nor in your confirmatory application, have you established the necessity of, nor any interest in, disclosing any of the above-mentioned personal data. Therefore, I have to conclude that the transfer of personal data through the (full) disclosure of the requested documents cannot be considered as fulfilling the requirement of Regulation 45/2001. Consequently, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to publicly disclose the personal data included therein and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

Please note that Article 4(1)(b) of Regulation 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

### **3. PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting further partial access to documents nr. 2, 3, 4 and 5. However, as the withheld parts are personal data of individuals, no further partial access is possible without undermining the interests described above.

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<sup>5</sup> Judgment in *Commission v Bavarian Lager*, case C-28/08 P, EU:C:2010:378.

<sup>6</sup> Ibid., paragraphs 77 to 78.

<sup>7</sup> Judgment in *ClientEarth and PAN Europe v EFSA*, case C-615/13 P, EU:C:2015:489, paragraph 47.

<sup>8</sup> Judgment in *Strack v Commission*, case C-127/13 P, EU:C:2014:2250, paragraph 106.

#### **4. MEANS OF REDRESS**

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission  
Alexander ITALIANER  
Secretary-General*

Enclosures (2):

- Document 2: Contract, November 2009 (Ref. Ares(2016)3273608);
- Document 7: Final interim report of July 2010 (Ref. Ares(2016)4056690).