



EUROPEAN COMMISSION
Neighbourhood and Enlargement Negotiations

The Director-General

Brussels, **25 SEP. 2017**

By registered letter

Ms. Luisa Izuzquiza
Calle Cava San Miguel 8, 4ºcentro
28005 Madrid
Spain

Advance copy by email:

ask+request-4556-c9ccd690@asktheeu.org

Subject: Your application for access to documents Ref. GestDem No 2017/4618

Dear Ms. Izuzquiza,

I refer to your email dated 8 August 2017, in which you make a request for documents concerning the Third Operational Committee of the North of Africa Window of the EU Emergency Trust Fund for Africa that took place on 23 May 2017 in Brussels. Your request concerns:

- any record of the aforementioned meeting which may include, but not necessarily limited to, minutes of the meeting, verbatim reports of the meeting, transcripts etc. that would provide a record of the proceedings of the meeting;
- a list of the participants in the meeting, or any document which contains the names and agency or institution the participants represent;
- the agenda of the meeting;
- any documents used and/or exchanged during the course of the meeting;
- any documents produced by DG NEAR for the purpose of the meeting.

The following documents have been identified as falling within the scope of your application:

- Agenda of the meeting;
- Technical Cooperation Facility - Action Document May 2017 EUTF North of Africa Window;
- Mediterranean City-to-City Migration (MC2CM) – Phase II - Action Document May 2017 EUTF North of Africa Window;
- Cooperation South - South with regard to migration - Action Document May 2017 EUTF North of Africa Window;
- List of attendance.

Please note that the conclusions of the session, the minutes and the Action fiche for Egypt are currently under discussion and in the process of being drafted by the European Commission, and therefore there are no final documents to be shared at this stage.

Having examined the documents identified under the provisions of Regulation (EC) No. 1049/2001 regarding public access to European Parliament, Council and Commission documents¹, I have come to the conclusion that all the documents can be disclosed, with the exception of the List of attendance, to which access has to be refused based on Article 4(1)b (protection of personal data) of Regulation (EC) No 1049/2001.

The justifications are as follows.

Protection of personal data

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 accordance with the *Bavarian Lager* ruling², when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001³ becomes fully applicable. Article 2(a) of Regulation (EC) No. 45/2001 defines personal data as *any information relating to an identified or identifiable natural person*.

The list of attendance contains information related to identified or identifiable individuals. In particular, it contains the names, contact data, nationality, ID card numbers and signatures of staff from EU and third country national authorities and of non-senior members of the European Commission staff.

¹ Official Journal L 145 of 31.5.2001, p. 43.

² Judgment of 29 June 2010, *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378.

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 (OJ L 8 of 12.1.2001, p. 1) – ‘Regulation 45/2001’.

The above-mentioned personal data of individuals or elements identifying them clearly constitute personal data within the meaning of Article 2(a) of Regulation (EC) No. 45/2001.

Pursuant to Article 8(b) of Regulation (EC) No. 45/2001, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC⁴ 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 cumulative⁵. Only if both conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EC) No. 45/2001, can the processing (transfer) of personal data occur.

In the case C-615/13P, the Court of Justice ruled that the institution does not have to examine *ex officio* the existence of a need for transferring personal data⁶. In the same ruling, the Court stated that if the applicant has not established a need to obtain the personal data requested, the institution does not have to examine the absence of prejudice to the person's legitimate interests⁷.

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. If you wish to receive these personal data, we invite you to provide us with arguments explaining your need for such information and demonstrating that there would be no adverse effects to the legitimate rights of the persons whose data should be disclosed. The exception set out in Article 4 (1) (b) of Regulation (EC) No. 1049/2001 is not subject to a public interest test.

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 list of attendance.

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 its 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:

4 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281 of 23 November 1995, p. 31.

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

6 Judgment of the Court of Justice of 16 July 2015 in Case C-615/13P ClientEarth v EFSA, EU:C:2015:489, paragraph 47.

7 *Idem*, paragraphs 47-48.

European Commission
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Brussels

or by email to:

sg-acc-doc@ec.europa.eu

Yours sincerely,



Christian Danielsson

Enclosed:

- Agenda of the meeting;
- Technical Cooperation Facility - Action Document May 2017 EUTF North of Africa Window;
- Mediterranean City-to-City Migration (MC2CM) – Phase II - Action Document May 2017 EUTF North of Africa Window;
- Cooperation South - South with regard to migration - Action Document May 2017 EUTF North of Africa Window.