



EUROPEAN COMMISSION

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory applications for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2019/2760 and  
2019/2761**

Dear Mesdames,

I refer to your emails of 27 June 2019, registered on 28 June 2019 and 1 July 2019, in which you submit two confirmatory applications on behalf of Access Info Europe, concerning the two initial applications mentioned above 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> (hereafter ‘Regulation (EC) No 1049/2001’).

Please accept our apologies for this late reply.

**1. SCOPE OF YOUR REQUEST**

In the initial application registered under number GESTDEM 2019/2760 of 10 May 2019, submitted by Ms Martina Tombini and addressed to the Secretariat-General of the European Commission, Access Info Europe requested access to, I quote,

1. ‘[...] documents summarising the mission of Commissioner Věra Jourová to Avignon and Prague from 29 July to 29 August 2018. Specifically, documents which provide the justification of the expenses of mission and basis and rationale for the Commissioner’s participation in an intensive week long French course, a

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<sup>1</sup> OJ L 345, 29.12.2001, p. 94.

<sup>2</sup> OJ L 145, 31.5.2001, p. 43.

summary of the activities for the remainder of the month-long mission, including purpose of visit to each city;

2. Documents relating to this French language course such as documents that demonstrate that Commissioners are permitted to charge travel to language courses as art of their mission expenses;
3. Documents relating to the payment for the language course (including the decision to pay for it, and the total amount spent on it), at least to the extent that it was paid for by the European Commission. '

In the initial application registered under number GESTDEM 2019/2761 of 10 May 2019, submitted by Ms Patricia González and addressed to the Secretariat-General of the European Commission, Access Info Europe requested access to, I quote,

1. '[...] documents which contain information on the payment of expenses on the mission of Commissioner Valdis Dombrovskis to Millefeuille from 19 to 24 August 2018. Namely, confirmation of the modes of transport reported under travel costs (with the amount for each) and details of the places of accommodation, and documents confirming that the reported accommodation costs of 695 Euro were all for accommodation;
2. Documents relating to this French language course such as documents that demonstrate that commissioners are permitted to charge travel to language courses as [p]art of their mission expenses;
3. Documents relating to the payment for the language course (including the decision to pay for it, and the total amount spent on it), at least to the extent that it was paid for by the European Commission.'

In its initial replies of 6 June 2019, the Office for the Administration and Payment of Individual Entitlements of the European Commission refused access to the documents based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

In your confirmatory applications, you request a review of this position. You underpin your request with detailed arguments, which I will address in the corresponding sections below.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I can inform you that the European Commission has identified the following documents as falling under the scope of your requests:

1) GESTDEM 2019/2760

- Summary fiche of Commissioner Věra Jourová relating to her mission to Avignon and Prag from 29 July 2019 to 29 August 2019, reference number DL 18 1566212;
- Accommodation invoice and proof of payment of 2 August 2018, reference number 7901;

2) GESTDEM 2019/2761

- Summary fiche of Commissioner Valdis Dombrovskis relating to mission to Millefeuille from 19 August 2019 to 24 August 2019, reference number DL 18 1551428;
- Accommodation invoice and proof of payment of 24 August 2018, reference number 7918;
- four supporting documents relating to travel.

I would like to clarify that the European Commission does not hold any document corresponding to the descriptions provided under points 2 and 3 of your applications. It needs to be noted that the European Commission did not pay the costs for the abovementioned French language courses.

Article 2(3) of Regulation (EC) No 1049/2001 provides that the right of access as defined in that instrument applies only to existing documents in the possession of the institution.

In this instance, as the European Commission does not hold any such documents corresponding to the description given under points 2 and 3 in your application, it is unfortunately not in a position to fulfil your request.

In addition, under the code of good administrative behaviour, I would like to note that pursuant to the regulatory framework for mission expenses,<sup>3</sup> all official travel is undertaken in the most cost-efficient way possible, according to the needs of the mission. Officials are indeed required to book:

- hotel rooms within strict price limits (per country or city); and
- the cheapest transportation option available on the market at the time of the purchase.

Following the assessment of the documents in question, I would like to inform you that wide partial access is granted to:

1. Summary fiche of Commissioner Věra Jourová, reference number DL 18 1566212;
2. Summary fiche of Commissioner Valdis Dombrovskis, reference number DL 18 1551428.

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<sup>3</sup> In addition to the above-mentioned Code of Conduct for Members of the Commission, see Commission decision of 18.11.2008, 'General implementing provisions adopting the Guide to missions for officials and other servants of the European Commission', C(2008)6215.

Nonetheless, I note that access to the remaining identified documents and to personal data of Commission officials not holding any senior management positions included in both summary fiches has to be refused based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, for the reasons set out below.

I note that information on mission costs of Members of the Commission and their cabinet members' is publicly available in the ATMOS application<sup>4</sup>.

## **2.1. Protection of privacy and the integrity of the individual**

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>5</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>6</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>7</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'<sup>8</sup>.

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<sup>4</sup> [https://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=cc463fab-bfff-4595-bb45-6d0af96b5e83&missionsperiod=2018\\_3](https://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=cc463fab-bfff-4595-bb45-6d0af96b5e83&missionsperiod=2018_3); [https://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=12405586-0ba8-4a54-94ae-12e8daeb7b26&missionsperiod=2018\\_4](https://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=12405586-0ba8-4a54-94ae-12e8daeb7b26&missionsperiod=2018_4).

<sup>5</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as '*European Commission v The Bavarian Lager* judgment'), C-28/08 P, EU:C:2010:378, paragraph 59.

<sup>6</sup> OJ L 8, 12.1.2001, page 1.

<sup>7</sup> OJ L 205, 21.11.2018, p. 39.

<sup>8</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

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

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’<sup>9</sup>.

In a recent judgment, the General Court confirmed that, in addition to names, information concerning the professional or occupational activities of a person can also be regarded as personal data where, first, the information relates to the working conditions of the said persons and, second, the information is capable of indirectly identifying, where it can be related to a date or a precise calendar period, a physical person within the meaning of the Data Protection Regulation<sup>10</sup>.

Part of the requested documents (the supporting documents) contain personal data, namely information relating to identified natural persons, Commissioners Věra Jourová, and Valdis Dombrovskis, in relation to various costs incurred during the missions concerned. This information reveals in a detailed manner how, where and when the Commissioners spent their respective allowances. It is clear that this information is indeed personal data. In addition, the identified mission summary fiches contain the personal data, such as names and surnames of European Commission staff not holding any senior management position. Furthermore, they contain the office and telephone numbers of the Commissioners in question.

In your confirmatory application, you do not contest that the requested documents contain personal data. You contest the extent to which the exception has been applied. You argue that ‘the Code of Conduct does not make reference to Article 4(1)(b) of the same regulation, which protects the privacy and the integrity of the individual. It might be assumed that this is because the proactive publication of the travel expenses of Europe’s top officials was not considered to be something particularly problematic in terms of data protection.’

I would like to clarify that the type or types of costs incurred by the Commissioners concerned by your applications are indeed personal data, as this information cannot be disassociated from the natural persons it concerns. In the *Nowak* judgment<sup>11</sup>, the Court of Justice has acknowledged that ‘[t]he use of the expression “any information” in the definition of the concept of “personal data”, within Article 2(a) of Directive 95/46, reflects the aim of the EU legislature to assign a wide scope to that concept, which is not restricted to information that is sensitive or private, but potentially encompasses all kinds of information, not only objective but also subjective, in the form of opinions and

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<sup>9</sup> Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

<sup>10</sup> Judgment of the General Court of 27 November 2018, *VG v Commission*, Joined Cases T-314/16 and T-435/16, EU:T:2018:841, paragraph 64 (hereafter referred to as ‘*VG v Commission*’ judgment).

<sup>11</sup> Judgment of the Court of Justice of 20 December 2017, *Peter Nowak v Data Protection Commissioner* (Request for a preliminary ruling from the Supreme Court), C-434/16, EU:C:2017:994, paragraphs 34-35.

assessments, provided that it “relates” to the data subject’(emphasis added). As regards the latter condition, it is satisfied where the information, by reason of its content, purpose or effect, is linked to a particular person.

It is obvious that information about costs, incurred by the Commissioners during the missions in question is information which, by reason of its content, is linked to particular natural persons. In the *VG v Commission* judgment, the General Court ruled that even anonymised data should be considered as personal data, if it would be possible to link them to an identifiable natural person through additional information<sup>12</sup>. In the present case, a clear link to an identifiable person remains, since your requests focus on identified members of the European Commission. Therefore, it is clear that the information contained in the requested documents clearly constitutes personal data.

In your applications you claim that ‘the Code itself establishes the public interest in making public information that is linked to very limited and specific items of personal data, namely the names of Commissioners who travelled on public business and at the taxpayers’ expense. Quite rightly, the Code does not require the publication of other personal data that might well cause damage to the Commissioners, such, to imagine an example, the numbers of their bank accounts into which any reimbursements might be paid. It is also important to note that, at least since the adoption of the Code of Conduct, all the Commissioners are informed in advance of the fact that mission expenses associated with their names will be made public.’

Notwithstanding the above, I note that your requests do not concern documents where the names of the persons concerned are merely mentioned, but documents containing personal data which are intrinsically connected with their persons. In full compliance with Regulation (EC) No 1049/2001, an individual assessment of the requested documents has to be performed taking into account the data protection parameters stipulated in Regulation (EU) 2018/1725.

You indicate that ‘the principles of good governance and participation set out in Article 15 TFEU as developed through the case law of the European Court of Justice as well as decisions of the European Ombudsman clearly point to the principle of maximum possible transparency in the spending of public funds’.

In this context, I would like to underline that the European Commission proactively publishes information about the mission expenses of its members. The Code of Conduct for the Members of the European Commission provides that ‘[f]or reasons of transparency, the [European] Commission will publish an overview of mission expenses per Member every two months covering all missions undertaken unless publication of this information would undermine the protection of the public interest as regards public security, defence and military matters, international relations or the financial, monetary or economic policy of the Union or a Member State.’<sup>13</sup>

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<sup>12</sup> *VG v Commission* judgment, cited above, paragraph 74.

<sup>13</sup> Commission Decision of 31.1.2018, C(2018)700 final, Article 6(2).

In the *Rechnungshof* case law, which concerned the disclosure of data on the income of employees of bodies subject to control by the Rechnungshof, the Court of Justice stated that ‘the data [...], which relate both to the monies paid by certain bodies and the recipients, constitute personal data within the meaning of Article 2(a) of Directive 95/46, being information relating to an identified or identifiable natural person.’<sup>14</sup> This finding is applicable also in the present case; thus the requested information on expenses of the individuals concerned during the mission being information relating to identified natural persons constitutes indeed personal data.

In the recent *Psara* ruling, which concerned the expenditure incurred by Members of the European Parliament, in particular disclosure of documents showing details regarding how and when [...] MEPs’ from each Member State ‘spent’, during various periods, the General Court concluded that ‘it is apparent [...] [that] all the requested documents contain personal data, so that the provisions of Regulation No 45/2001 are applicable in their entirety to the present case.’<sup>15</sup> This case, concerned members of a European institution and details on the expenditure they incurred. I, therefore, consider the findings of the General Court as directly relevant to the present case, which concerns commissioners. The General Court did not only conclude that the requested documents obviously contained personal data, but also confirmed the decision of the European Parliament to refuse access to these documents. In this same judgment, the General Court stated that ‘the fact that data concerning the [MEPs] in question are closely linked to public data on those persons, inter alia as they are listed on the Parliament's internet site, and are, in particular, MEPs’ names does not mean at all that those data can no longer be characterised as personal data, within the meaning of Article 2(a) of Regulation No 45/2001.’<sup>16</sup>

The name and surname of European Commission’s official not holding any senior management position, telephone numbers and offices addresses and the information regarding the details on mission costs of the Commissioners are indeed data from which the identity of the people concerned can be deduced, consequently they undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725. Moreover, I would like to point out that Article 4(1)(b) of Regulation (EC) No 1049/2001 also protects the integrity of the individual, which is a broader concept than privacy.

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 [...] if the 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

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<sup>14</sup> Judgment of the Court of Justice of 20 May 2003, *Rechnungshof (C-465/00) v Österreichischer Rundfunk and Others and Christa Neukomm (C-138/01) and Joseph Lauermann (C-139/01) v Österreichischer Rundfunk*, (References for a preliminary ruling: Verfassungsgerichtshof (C-465/00) and Oberster Gerichtshof (C-138/01 and C-139/01) – Austria), Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 64.

<sup>15</sup> Judgment of the General Court of 25 September 2018, *Maria Psara and Others v European Parliament* (hereafter referred to as ‘*Psara v European Parliament* judgment’), Joined Cases T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 52.

<sup>16</sup> Ibid, paragraph 52.

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'.

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.

In Case C-615/13 P (*ClientEarth*), 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>17</sup> This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your confirmatory application, you put forward several arguments to justify why a transmission of the personal data should take place.

Firstly, you refer to Article 5 of Regulation (EU) 2018/1725 and argue that the requested processing is lawful. In your view, 'Access Info explicitly established public interest in obtaining the information and had indicated to the Commission the legal grounds for providing the documents out of compliance with a legal obligation to which the controller is subject.'

Although I agree that the processing of the data relating to mission expenses by the European Commission is a lawful activity, this does not prove that the transmission of all the collected personal data to you fulfils the requirements of Article 9 of Regulation (EU) 2018/1725.

In this context, I note that the Code of Conduct for the Members of the European Commission only refers to the publication of an 'overview' of the mission expenses and does not contain any legal rule to publish the 'break-down' of the costs you request.

Therefore, your arguments are not sufficient to establish that the conditions of Article 9 and Article 5 of Regulation (EU) 2018/1725 are fulfilled.

Furthermore, you refer to the mission of Access Info, the fact that you make the data available 'to all members of the European (and indeed the global) public' and conclude

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<sup>17</sup> Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.



that '[a]s a civil society organisation, Access Info Europe plays a watchdog role akin to that of journalists in line with the European Court of Human Rights jurisprudence on access to information. [You] therefore have a legitimate interest in obtaining information about the use of public funds'.

As a preliminary remark, I would like to draw attention to Article 2(1) of Regulation (EC) No 1049/2001, which states that '[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation' (emphasis added). It is clear from this provision that the right of access is neither unconditional nor unlimited.

Your arguments on transparency stipulated above, do not establish that it is necessary to have all the data transmitted to you for a specific purpose in the public interest. Neither do you demonstrate the existence of a 'specific' purpose nor demonstrate that the transfer of personal data you request is the most appropriate of the possible measures for attaining your objective and that it is proportionate to that objective, by providing express and legitimate reasons to that effect and taking into account the data which are proactively published by the European Commission.<sup>18</sup>

The General Court has rejected very similar arguments put forward in the *Psara v European Parliament* judgment, where the applicants stated various objectives pursued by their requests for access to documents, namely, on the one hand, to enable the public to verify the appropriateness of the expenses incurred by MEPs in the exercise of their mandate and, on the other, to guarantee the public right to information and transparency. The General Court stated that 'because of their excessively broad and general wording, those objectives cannot, in themselves, establish the need for the transfer of the personal data in question.'<sup>19</sup> It also concluded that 'the wish to institute public debate cannot suffice to show the need for the transfer of personal data, since such an argument is connected solely with the purpose of the request for access to the documents'<sup>20</sup>. The General Court concluded that 'the need for the transfer of personal data may be based on a general objective, such as the public's right to information concerning the conduct of MEPs in the exercise of their duties, [...] [however] only demonstration by the applicants of the appropriateness and proportionality to the objectives pursued by the request for disclosure of personal data would allow the Court to verify the need for that disclosure within the meaning of Article 8(b) of Regulation No 45/2001.' These findings are applicable to these cases at hand, as the new Regulation (EU) 2018/1725 does indeed put the burden of proof on the recipient who has to demonstrate the existence of the necessity of the transmission of the data for a specific purpose in the public interest.

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<sup>18</sup> Judgment of the General Court of 15 July 2015, *Gert-Jan Dennekamp v European Parliament* (hereafter referred to as '*Dennekamp v European Parliament* judgment', T-115/13, EU:T:2015:497, paragraphs 54 and 59.

<sup>19</sup> *Psara v European Parliament* judgment, cited above, paragraph 74.

<sup>20</sup> Ibid, paragraph 90.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the Commissioners concerned would be prejudiced by the disclosure of the details regarding the mission costs reflected in the documents, as there is a real and non-hypothetical risk that public disclosure would harm their privacy and integrity. Moreover, public disclosure of the names of the non-senior European Commission staff or disclosure of the telephone numbers and office addresses would undermine the privacy of the data subjects and subject them to unsolicited external contacts.

Please note also that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by the disclosure of the personal data concerned.

## **2.2. Information falling outside the scope of your request**

The mission summary fiches contain other information of administrative nature regarding the missions such as, for example, details regarding the reimbursement limits applied in the particular case or the time to treat the mission statement by the Office for the Administration and Payment of Individual Entitlements of the European Commissions.

As this information does not relate to the travel costs incurred by the Commissioners in question, in particular the mode(s) of transport used, details of the places of accommodation and the reported accommodation costs of 695 Euro, I consider that the above-mentioned information falls outside the scope of your request.

## **3. PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting partial access to the documents requested.

Please note that wide partial access is granted to:

1. Summary fiche of Commissioner Věra Jourová relating to her mission to Avignon and Prag from 29 July 2019 to 29 August 2019, reference number DL 18 1566212;
2. Summary fiche of Commissioner Valdis Dombrovskis relating to mission to Millefeuille from 19 August 2019 to 24 August 2019, reference number DL 18 1551428.

However, for the reasons explained above, no meaningful (further) partial access is possible without undermining the protection of privacy and the integrity of the individuals.

Consequently, I have come to the conclusion that the remaining documents requested are covered in their entirety by the invoked exceptions to the right of public access.

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

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European 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*  
*Ilze JUHANSONE*  
*Acting Secretary-General*

Enclosures: (2)