



EUROPEAN COMMISSION  
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

the Acting Director-General

Brussels,

**Subject: Your application for access to documents – Ref. GestDem 2020/5129**

Dear Mr Dohle,

I refer to your application dated 28 August 2020<sup>1</sup>, registered on 29 August 2020 under the above-mentioned reference number<sup>2</sup>. Your request concerns:

‘documents which contain the following information:

all correspondence (letters, emails, WhatsApp, internal notes) with or related to Terre des Hommes International Federation and/or their national branches, timeframe from 2007 until now’.

I also refer to our email of 21 September 2020, by which we informed you that an extended time limit was needed to retrieve the documents requested, in conjunction with your other requests for access to documents<sup>3</sup>.

Your application concerns the following documents:

1. Email from Terre des Hommes to the Commission, ‘Invitation as speaker to the EU public conference “Closing a protection gap for European children on the move”’, 4 February 2015;
2. Draft programme of Public Conference ‘Closing a protection gap for European children on the move!’;

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<sup>1</sup> Ref. Ares(2020)4489005.

<sup>2</sup> Ref. Ares(2020)4489019.

<sup>3</sup> Ref. Ares(2020)4920267.

Mr Arun Dohle  
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Kraijenhoffstraat 137A  
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By email only:  
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3. Letter from the Commission to Terre des Hommes Albania, 24 September 2008;
4. Letter from Terre des Hommes Albania to the Commission, 14 December 2007;
5. Letter from the Commission to Terre des Hommes Albania, 23 September 2008;
6. Letter from the Terre des Hommes to the Commission, 12 September 2008;

Having examined these documents under the provisions of Regulation (EC) No 1049/2001<sup>4</sup> I have decided that:

- Full access can be granted to document 2, as ‘Closing a protection gap for European children on the move!’ was a public conference and therefore its agenda was published;
- Partial access can be granted to documents 1 and 3, as full disclosure is prevented by the exception to the right of access laid down in Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001;
- Access must be refused to documents 4-6, as disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(b) and Article 4(2), first indent (protection of the commercial interests of a natural or legal person) of Regulation (EC) No 1049/2001.

The justifications are as follows:

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

Complete disclosure of the documents is partly prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001. In particular, these documents contain the names, contact details and signatures of Commission staff members not pertaining to the senior management, as well as of staff members of other organisations.

Article 9(1)(b) of the Data Protection Regulation<sup>5</sup> does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data, nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

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 requested documents, 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 disclosure of the personal data concerned.

### **2. Protection of the commercial interests of a natural or legal person, including intellectual property**

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<sup>4</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, Official Journal L 145 of 31 May 2001, p. 43.

<sup>5</sup> 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, OJ L 295, 21.11.2018, p. 39.

Article 4(2), first indent, of Regulation (EC) No 1049/2001 provides that ‘the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, [...], unless there is an overriding public interest in disclosure’.

The withheld documents 4-6 contain exchanges between the Commission and Terre des Hommes Albania, regarding the latter’s rejection from a call for proposals. As a result, these documents include information concerning Terre des Hommes as a candidate to the grant procedure, such as reasons for the rejection, specific weaknesses and scores. According to the judgment of the Court of Justice in case C-450/06, *Varec v Commission* ‘both by their nature and according to the scheme of Community legislation in that field, contract award procedures are founded on a relationship of trust between the contracting authorities and participating economic operators. Those operators must be able to communicate any relevant information to the contracting authorities in the procurement process, without fear that the authorities will communicate to third parties items of information whose disclosure could be damaging to them’<sup>6</sup>. I consider these principles as applicable by analogy to grant procedures, and therefore that disclosure of the information included in the above-mentioned documents could be damaging to the economic operator in question.

In this context, I would like to bring your attention to case T-718/15, *PTC Therapeutics International v European Medicines Agency (EMA)*<sup>7</sup>, where the General Court ruled that the exception in Article 4(2) of Regulation No 1049/2001 applies when ‘the documents requested contain elements which may, if disclosed, seriously undermine the commercial interests of a legal person. That is the case, in particular, where the requested documents contain commercially sensitive information relating, in particular, to the business strategies of the undertakings concerned or to their commercial relations or where those documents contain information particular to that undertaking which reveal its know-how and expertise’.

Moreover, please note that the exception relating to commercial interests can be applied, under certain circumstances, to non-commercial entities such as non-profit associations and public entities applying for a grant. The latter was confirmed in case T- 439/08, *Kalliope Agapiou Joséphidès v European Commission and Education, Audiovisual and Culture Executive Agency*<sup>8</sup> where the General Court held that the University of Cyprus (public entity) could have commercial interests, and therefore information concerning the description of a project undertaken by the university, specific clauses to it, as well as the methodology and expertise belonging to it, should be protected.

Therefore, given particularly the competitive environment in which Terre des Hommes operates, it is necessary to consider that the information in question is confidential.

Finally, the exception of Article 4(2), first indent, of Regulation (EC) No 1049/2001 has to be read in light of Article 339 of the Treaty on the Functioning of the European Union, which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

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<sup>6</sup> Paragraph 36.

<sup>7</sup> Paragraph 85.

<sup>8</sup> Paragraphs 127-128.

In consequence, there is a real and non-hypothetical risk that public access to the abovementioned information would undermine the commercial interests of Terre des Hommes.

### **No overriding public interest in disclosure**

Pursuant to Article 4(2) of Regulation (EC) No 1049/2001, the exceptions to the right of access defined therein must be waived if there is an overriding public interest in disclosing the documents requested. In order for an overriding public interest in disclosure to exist, this interest first has to be public and, secondly, overriding, i.e. in this case it must outweigh the commercial interests of a natural or legal person protected under Article 4(2), first indent, of Regulation (EC) No 1049/2001.

In your request, you do not put forward any arguments demonstrating the existence of an overriding public interest in disclosure. Similarly, the Commission has not identified any public interest that would override the interests protected by Article 4(2), first indent, of Regulation (EC) No 1049/2001.

### **Partial Access**

We have considered whether partial access could be granted to the documents requested and currently withheld but this was deemed impossible, as the sensitive elements are integral to them. Please note that we cannot provide you with more detailed information on these documents without disclosing their substance, which is protected by the quoted exceptions laid down in Article 4 of Regulation (EC) No 1049/2001.

### **Means of Redress**

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:

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

[e-signed]

Maciej Popowski

Enclosures: Documents 1-3