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**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2016/69**

Dear Mr Dohle,

I refer to your e-mail of 11 March 2016, registered on the 15 March 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 documents² ('Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 30 December 2015, dealt with by the Commission's Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR), you requested access to *all internal and external documents (letters/emails, minutes, briefing notes, etc) related to the issue of the adoption of Serbian children:*

- *related to the stolen children (declared dead at birth) during the seventies and eighties;*
- *as well as the current system of inter-country adoption.*

You explained that your application concerned *documents/correspondence with/from DG NEAR (previous DG Enlargement) and the EU Delegation in Serbia, including the exchange of information between those two services (time period 2010 - now).*

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

In its initial reply DG NEAR identified the following documents as falling under the scope of your application:

- a) Letter addressed to Mr Degert, Head of Delegation, dated 17 May 2012 (Ares(2016)1546101);
- b) Reply from Mr Davenport, Head of Delegation, on IPA projects and deinstitutionalisation (ARES (2015) 856019);
- c) Letter addressed to Mr Davenport, dated 17 May 2014 (Ares(2014) 1685014);
- d) Letter from Mr Davenport, dated 23 May 2014 (Ares(2014) 1685014);
- e) Briefing from the EU Delegation, dated 9 June 2014, for a meeting relating to the missing babies case (Ares(2016)1546234);

DG NEAR provided wide partial access to the above-mentioned documents, redacting only sections containing personal data and other information covered by the exception of Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and integrity of the individual).

Through your confirmatory application you contest that *the letter from Mr Paquet to the EU Delegation about IPA projects and DI is not included* among the identified documents. You further note *that the letter of the EU Delegation is not dated and has no registration number* and request the Commission to provide you *with the dated and registered letter of the EU Delegation*.

This decision will address the contested points above.

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 concerned at the initial stage.

Following this review, the Secretariat-General identified the following additional document as falling within the scope of your initial request: note from the Director of Directorate C-Albania, Bosnia & Herzegovina, Serbia, Kosovo, Mr Paquet, to the Head of the EU Delegation in Belgrade concerning IPA projects on deinstitutionalisation (ARES (2014)4298986) ('document f').

This document was not identified at initial stage due to a clerical error. I am pleased to inform you that wide partial access is granted to this document, after redaction of signature of Mr Paquet and the names and initials of the Commission officials not forming part of senior management. The reasons for these redactions are explained below.

As regards the letter of the EU Delegation, please note that it was registered in ARES on 27 February 2015 under the registration number (Ares (2015)856019). Please find annexed a copy of the letter on which its ARES registration number is indicated.

2.1. Protection of Privacy and Integrity

Article 4(1)(b) of Regulation 1049/2001 provides that *access to documents is refused where disclosure would undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

In its judgment in the *Bavarian Lager* case³, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001⁴ (hereinafter the 'Data Protection Regulation') becomes fully applicable. In this Judgment the Court stated that Article 4(1)(b) *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 Regulation No 45/2001*⁵.

Article 2(a) of the Data Protection Regulation provides that '*personal data*' shall mean *any information relating to an identified or identifiable person [...]*. As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*)⁶, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life.*

Document f contains personal data, such as names of Commission officials not occupying any senior management position, signatures, personal e-mail addresses and direct telephone lines, enabling the latter to be identified. These undoubtedly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation. They have been redacted from document f which is annexed to the present decision.

Pursuant to Article 8(b) of Regulation 45/2001, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC 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.⁷

In the *ClientEarth* case, the Court of Justice ruled that the institution does not have to examine *ex officio* the existence of a need for transferring personal data⁸. In the same ruling, the Court stated that if the applicant has not established a need to obtain the

³ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd.*

⁴ 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, Official Journal L 8 of 12.1.2001.

⁵ Paragraph 59.

⁶ Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

⁷ Judgment of the Court of Justice of 29 June 2010, *Bavarian Lager*, quoted above, paragraphs 77-78.

⁸ Case C-615/13P, Judgment of the Court of Justice 16 July 2015 *ClientEarth v EFSA*, paragraph 47.

personal data requested, the institution does not have to examine the absence of prejudice to the person's legitimate interests⁹.

I note that in your confirmatory application, you do not put forward any arguments to establish the necessity of disclosing the requested personal data. Nor have you expressed any specific interest in obtaining these personal data. Furthermore, there are reasons to assume that the legitimate interests of the individual concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would subject them to unsolicited external contacts and forgery of their signature.

Consequently, I conclude that access cannot be granted to the personal data concerned pursuant to Article 4(1)(b) of Regulation 1049/2001.

I would also like to point out that, as regards the personal data included in the document requested, the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

3. 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*

⁹ Case C-615/13P, Judgment of the Court of Justice 16 July 2015 *ClientEarth v EFSA*, paragraph 47-48.