



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The Acting Director-General

Brussels,

Subject: Your applications for access to documents – Ref. GestDem 2020/4880, GestDem 2020/5102, GestDem 2020/5103, GestDem 2020/5130, GestDem 2020/5259, GestDem 2020/5274, GestDem 2020/5275 and GestDem 2020/5343

Dear Mr Dohle,

I refer to the reply sent on 18 September 2020¹, which concerned your applications for access to documents registered under the references GestDem 2020/4880, GestDem 2020/4882, GestDem 2020/5102, GestDem 2020/5130, GestDem 2020/5274, GestDem 2020/5275 and GestDem 2020/5343. As mentioned in the letter, my services have continued to search in the archives for the remaining documents.

This reply concerns the following requests:

- GestDem 2020/4880: The annex to the note dated 28 November 2002, “Romania – progress in child protection”, registration no. D(2002) 95602;
- GestDem 2020/5102: The annex to the note for the file dated 18 September 2002, “Children Romania / SERA / Mr. de Combret”, registration no. D(2002) 95434;
- GestDem 2020/5103: The note for the file dated 8 July 1992, “Orphelinats roumains et Monsieur de Combret”;

¹ Ref. Ares(2020)4903809.

Mr Arun Dohle
Easy Start Office
Kraijenhoffstraat 137A
Amsterdam NL 1018RG
The Netherlands

By email only:

ask+request-8540-4a6357b1@asktheeu.org; ask+request-8494-9654613d@asktheeu.org;
ask+request-8236-a215add0@asktheeu.org; ask+request-8525-c9740f8b@asktheeu.org;
ask+request-8526-575a6b78@asktheeu.org

- GestDem 2020/5130: The note for the file dated 20 May 2005, “Meeting concerning the Romanian legislation on Children’s Rights and Adoption”, registration no. D(2005)799, together with its annexes;
- GestDem 2020/5259: Minutes of the team meeting of the Romania team of DG ELARG, 22 June 2005;
- GestDem 2020/5274: The annex to the note for the File dated 19 April 2004, “The Hague Convention”, registration no. D(2004)101624;
- GestDem 2020/5275: Letter and its annex of Prime Minister Adrian Năstase to Commissioner for Enlargement Gunter Verheugen, dated 5 March 2004;
- GestDem 2020/5343: The annex to the note for the file dated 31 January 2002, “US non-paper on Romania's adoption policy”, registration no. D(2002)95039.

Based on internal consultation and research in the Commission archives, and having examined the documents identified under the provisions of Regulation (EC) No 1049/2001², I have decided that:

- 1) Full access can be granted to:
 - GestDem 2020/5274: The annex to the note for the file dated 19 April 2004, “The Hague Convention”, registration no. D(2004)101624. Please note that the annex is a public document and it can be accessed at the following link: <https://pace.coe.int/en/files/16775>
- 2) Partial access, subject to redaction only of personal data, in accordance with Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001 can be granted to:
 - GestDem 2020/4880: The annex to the note dated 28 November 2002, “Romania – progress in child protection”, registration no. D(2002) 95602;
 - GestDem 2020/5102: The annex to the note for the file dated 18 September 2002, “Children Romania / SERA / Mr. de Combret”, registration no. D(2002) 95434;
 - GestDem 2020/5130: The note for the file dated 20 May 2005, “Meeting concerning the Romanian legislation on Children’s Rights and Adoption”, registration no. D(2005)799, together with its annexes.
- 3) Access must be refused to:
 - GestDem 2020/5103: The note for the file dated 8 July 1992, « Orphelinats roumains et Monsieur de Combret »;
 - GestDem 2020/5343: The annex to the note for the file dated 31 January 2002, “US non-paper on Romania's adoption policy”, registration no. D(2002)95039.

Disclosure of these documents is prevented by the exceptions 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 and Article 4(3), second subparagraph, of the same Regulation (protection of the decision-making process).

I regret to inform you that following extensive researches, the document requested under GestDem 2020/5275 could not be retrieved in the European Commission archives, as due

² 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.

to a technical error, it was not uploaded electronically in the Adonis registration system which was in place in 2004.

With regard to request GestDem 2020/5259: I refer to the request for clarification sent by my services on 25 September 2020³ in which we informed you that based on the description provided in your application, we had not been able to identify the document requested, and therefore, we asked you to provide us with more detailed information on the document, such as any other reference which might facilitate our searches in the internal systems of the Commission. I note that so far you have not replied to our request. Please be informed that in accordance with the third paragraph of Article 2 of the Detailed rules⁴ for the application of Regulation (EC) No 1049/2001, the deadline of 15 working days for handling your application will start running when we receive the requested clarifications.

With regard to request GestDem 2020/5129⁵: the reply to this request will be sent by separate letter.

The justifications for the partial disclosure or refusal of access for the documents listed above are as follows:

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

Complete disclosure of the documents is 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 names of Commission staff members not pertaining to the senior management, hand written signatures, photos which can lead to the identification of individuals and CVs of third parties.

Article 9(1)(b) of the Data Protection Regulation⁶ 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 subjects might be prejudiced. In your requests, 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 decision-making process

³ Ref. Ares(2020)5040731.

⁴ Official Journal L 345 of 29 December 2001, p. 94.

⁵ Ref. Ares(2020)4489005.

⁶ 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(3) second subparagraph of Regulation (EC) No 1049/2001 provides that ‘Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure’.

The documents to which access is refused contain internal opinions of European Commission officials, their informal exchanges with counterparts and their views in relation to the subject matters concerned, which were used as part of the internal deliberations and consultations, but do not necessarily, reflect the official and final position of the institution. Releasing these internal opinions is likely to bring a serious harm to the decision-making process concerned, as it would deter staff members of the European Commission from putting forward their views in an open and independent way and without being unduly influenced by the prospect of disclosure.

Indeed, as the General Court has held, ‘the possibility of expressing views independently within an institution helps to encourage internal discussions with a view to improving the functioning of that institution and contributing to the smooth running of the decision-making process’⁷.

Therefore, public release of these documents is likely to bring a serious harm to the decision-making process by severely affecting the ability of the European Commission to hold frank internal discussions. In addition, disclosure of these documents, which were not designed for external communications purposes, might lead to misunderstandings and/or misrepresentations regarding the EU position on different topics, such as the adoption of children.

In light of the above, I consider that this risk is reasonably foreseeable and non-hypothetical and that these documents should be protected in accordance with Article 4(3), second subparagraph, 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 exception laid down in Article 4(3) 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)

⁷ Judgment of 15 September 2016, *Phillip Morris v Commission*, T-18/15, EU:T:2016:487, paragraph 87.

BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

[e-signed]

Maciej Popowski

Encl.: The annex to the note dated 28 November 2002, “Romania – progress in child protection”, registration no. D(2002) 95602;

 The annex to the note for the file dated 18 September 2002, “Children Romania / SERA / Mr. de Combret”, registration no. D(2002) 95434;

 The note for the file dated 20 May 2005, “Meeting concerning the Romanian legislation on Children’s Rights and Adoption”, registration no. D(2005)799.