



EUROPEAN COMMISSION

Directorate-General for European Civil Protection and Humanitarian Aid Operations (ECHO)

The Director-General

Réf. D

Brussels,
ECHO E.3

15. 01. 2020

By registered letter with acknowledgment of receipt

Ms Jelena Prtoric
Podbreg 19
51000 Rijeka
Croatia

Email: ask+request-7467-
1c8897d5@asktheeu.org

Subject: Your applications for access to documents – Ref GestDem No 2019/6778 and 2019/6779

Dear Ms Prtoric,

We refer to your emails dated 20 November 2019 in which you make a request for access to documents, registered on 20 November 2019 under the above-mentioned reference numbers.

Your requests concern documents containing the following information:

1. Request 2019/6778:

- The total sum of the EU-provided humanitarian aid to Croatia to deal with "so-called" migrant crisis on its territory since August 2018, as well as the date(s) when the aid instalments were provided to the country, and the institutions/organisations the aid was provided to
- The description of the ways in which the aid was spent (services, rents, medicine, equipment, facilities etc).

2. Request 2019/6779:

- The total sum of the EU-provided humanitarian aid to Bosnia and Herzegovina to deal with "so-called" migrant crisis on its territory since the beginning of 2018, as well as the date(s) when the aid instalments were provided to the country, and the institutions/organisations the aids were provided to;
- The description of the ways in which the aid was spent (services, rents, medicine, equipment, facilities etc).

Concerning the request registered as Gestdem 2019/6778 related to Croatia, we could not have identified documents which correspond to your request, because on the basis of Article 214 of the Treaty on Functioning of the European Union "*The Union's operations in the field of humanitarian aid (...) shall be intended to provide ad hoc assistance and relief and protection for people in third countries who are victims of natural or man-made disasters (...)*". Therefore, DG ECHO does not provide funds for actions in Croatia and, hence, it has no documents on them. As specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that Regulation applies only to existing documents in the possession of the institution. Given that no

such documents, corresponding to the description given in your application, are held by DG ECHO, DG ECHO is not in a position to fulfil your request.

Regarding your request Gestdem 2019/6779, first part of the request, we have not identified documents in relation to the total sum and dates of disbursement of the aid to the country. On the basis of Article 7 of the Council Regulation (EC) No 1257/96 on humanitarian aid¹, the aid is only provided to non-governmental organisations which must meet specific criteria mentioned in that Article. Therefore, humanitarian aid can never be granted to states or governments, but to non-governmental organisations which are approved partners of DG ECHO who signed a relevant partnership agreement.

Although you requested access to (existing) documents specifically referring to Regulation 1049/2001, it seems that your application rather constitutes a request for information. Consequently, we would like to suggest to you contact unit C2 in DG ECHO which deals with humanitarian actions in Bosnia and Herzegovina by using the following email address: ECHO-C2-ATTRIBUTION@ec.europa.eu

In the meantime, you may find some useful information mentioned on publically available webpages such as:

- Factsheet: https://ec.europa.eu/echo/where/europe/bosnia-and-herzegovina_en
- Recent press release: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6142
- Humanitarian Implementation Plan (HIP) 2018 and HIP 2019: https://ec.europa.eu/echo/d-cisions-de-financement-hips-2018_fr

However, as specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that Regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application, are held by DG ECHO, DG ECHO is not in a position to fulfil this part of your request.

Regarding the second part of your request 2019/6779, five documents (with five annexes) concerning five humanitarian actions in Bosnia and Herzegovina were identified. These are Single Forms (*i.e.* documents which constitute a part of a grant agreement and describe an action from the stage of application by a partner to the final stage), and in particular their annexes containing financial information (budget of a particular action).

Having examined these documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4 (2) first indent of this Regulation. Pursuant to this Article, access to a document has to be refused if its disclosure would undermine the protection of commercial interest of a natural or legal person, unless there is an overriding public interest in disclosure.

Exceptions based on the protection of commercial interest

Although partners of DG ECHO are non-profit organisations, the exception relating to commercial interests can also be applied to them when they are applying for humanitarian aid funding and pursuing a humanitarian aid action for DG ECHO. The European Court of Justice has ruled in judgment of 21 October 2010, Agapiou Josephides vs. Commission and EACEA (T-439/08, EU:T:2010:442, paragraphs 126-129) that, in a non-profit grant application, "commercially sensitive" information meriting confidentiality may include information on the actions' budget.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ar10001>

Indeed, the documents which correspond to the second part of your request registered as Gestdem 2019/6779 contain specific information about budgets of the actions in Bosnia and Herzegovina and on types of expenditures in those budgets. It should be noted that disclosure of these documents would reveal elements linked to DG ECHO's partners' cost structure, budget allocated to implementing partners, funds received from other donors etc. In particular, in the context of the new financing decisions, disclosure of the requested documents could undermine the competitive position of the partners who run actions in Bosnia and Herzegovina vis à vis other potential applicants for new funding.

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the document. We consider that no overriding public interest to disclose this commercially sensitive information has been established and that it can reasonably be assumed that such disclosure would prejudice the purpose of the audit.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this 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
Secretary-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

Yours sincerely,



Monique PARIAT

