



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND  
TECHNOLOGY

The Director-General

Brussels  
CNECT.R.4

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*Via email:*  
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**Subject: Your request for access to document –EASE 2022/6047**

Dear Mr Rudl,

We refer to your email of 17 October 2022 wherein you make a request for access to documents pursuant to 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 (hereinafter ‘Regulation (CE) No 1049/2001’), which was registered on 24 October 2022 under the reference number indicated in the subject of this letter.

## **1. SCOPE OF YOUR APPLICATION**

Your request reads as follows:

*“(..)All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, transcripts, recordings and minutes/notes) relating to the meeting between Filomena Chirico and Telefonica on 31. 05. 2021 (..)”.*

## **2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST**

The following documents have been identified as falling within the scope of your request:

- Email, 9 June 2021, Next Gen EU funding for 5G deployment in rural areas in Spain, ARES(2022)8400394, (**“Document 1”**)
- Paper, 9 June 2021, Public Funding of 5G deployment in rural areas vs State Aid-Spain, ARES(2022)8400394, (**“Document 2”**)
- Back to Office report, Meeting with Telefonica 31 May 2021, ARES(2022)8538319, (**“Document 3”**)

### 3.ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified document under the provisions of Regulation 1049/2001 and taking into account the opinion of the third party, we have arrived at the conclusion that partial access can be granted to Documents 1-3. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

#### *(i) Protection of commercial interests*

The first indent of Article 4(2) of the Regulation 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*”.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), 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.

Parts of Documents 1 and 2 contain information on strategic priorities and commercial developments of the legal entity concerned. Document 3 is an internal document that reflects the positions and informal views of the legal entity concerned. There is a real and non-hypothetical risk that disclosure of these parts of the above-mentioned documents could undermine and seriously affect the commercial interests of the company at question. Therefore, access to these parts of the Documents 1-3 cannot be granted as the disclosure is prevented by the exception to the right of access referred to above.

Consequently, the above-mentioned parts of Documents 1, 2 and 3 have been blanked out.

#### *(ii) Protection of privacy and integrity of individuals*

Full disclosure of Document 1 is also prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since the identified Documents 1 and 2 contain the following personal data:

- the names of Commission staff members not pertaining to senior management;
- Names, functions and telephone numbers of other natural persons.

Article 9(1)(b) of the Data Protection Regulation <sup>(1)</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

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<sup>(1)</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.

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, we conclude that, pursuant to Article 4(1)(b) Regulation 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.

#### **4. OVERRIDING INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of the documents identified. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of the aforementioned parts of the Documents which are being withheld but we have not been able to identify such an interest.

#### **5. REUSE OF DOCUMENTS**

You may reuse public documents which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the (parts of) disclosed Document 3 originating from the Commission free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the Document. Please note that the Commission does not assume liability stemming from the reuse.

Please note that Document 3 was drawn up for internal use under the responsibility of the relevant staff member of DG CONNECT. It solely reflects the author's interpretation of the interventions made. It does not reflect the position of nor does it commit the Commission, DG CONNECT and/or any third party referred to and cannot be quoted as such.

Please note that Documents 1 and 2 originating from a third party are disclosed to you based on Regulation 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released document without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

#### **6. CONFIRMATORY APPLICATION**

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 this position. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission **by asking for a review via your portal <sup>(2)</sup> account** (available only for initial requests submitted via the portal account), or via the following address:

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<sup>(2)</sup><https://www.ec.europa.eu/transparency/documents-request>

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Brussels

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures: (3)