Subject: Your request for access to documents - EASE 2024/0677

Dear Mr Teffer,

We refer to your email dated 2 February 2024 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 1049/2001’), registered on 3 February 2024 under the abovementioned reference number.

1. SCOPE OF YOUR APPLICATION

You requested access to the following documents:

‘[...] All documents related to the Digital Europe Programme project 101091656 - QCINED - QCINED: TOWARDS A NATIONAL QUANTUM COMMUNICATION INFRASTRUCTURE IN THE NETHERLANDS (budget reference JAG.1147397.1), including but not limited to the grant application forms, analysis of the application, decision to provide the project the grant, e-mails between the applicant and the Commission, and (interim) progress reports [...]’
2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUESTS

- Award decision, DG CONNECT, Digital Europe Programme (DIGITAL), Call: DIGITAL-2021-QCI-01, Topic: DIGITAL-2021-QCI-01-DEPLOY-NATIONAL, Ares(2022)8659572, (‘Document 1’)
- Letter, DG CONNECT, Digital Europe Programme- QCINed (101091656), Implementing Decision (EU) 2022/2506 on measures for the protection of the Union budget, Ares(2023)2435970, (‘Document 4’)
- Letter to the European Commission, dated 8 September 2022, Ares(2022)6216421, (‘Document 5’)
- Proposal, QCINed - 101091656, EU Secure Quantum Communication Infrastructure, DIGITAL-2021-QCI-01, Ares(2022)2371065 (‘Document 6’) and the attachments:
  o Technical Description (part B), (‘Document 7’)
  o Annex 4, (‘Document 8’)
  o Declaration of Ownership and Control, Summary for QCINed Project, (‘Document 9’)
  o Ethics table, (‘Document 10’)
  o Security table, (‘Document 11’)
  o Letter of authorisation , (‘Document 12’)
- Grant Agreement, DG CONNECT, Project: 101091656 — QCINed, Digital Europe Programme (DIGITAL), Ares(2022)8659627, (‘Document 13’)
- Letter to the European Commission, dated 7 December 2023, Ares(2023)8419817, (‘Document 18’)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified document under the provisions of Regulation 1049/2001, we have arrived at the conclusion that partial access may be granted to Documents 1 – 4, while access should be denied to Documents 5-18. Full and partial
disclosure of the documents identified is prevented by the exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Partial Disclosure

(i) Protection of privacy and integrity of the individual

Disclosure of Documents 1-4 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

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

Article 9(1)(b) of the Data Protection Regulation (1) 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) 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.

(ii) Protection of commercial interests

Article 4(2) first indent of 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 1-3 are covered by the abovementioned exception as they contain confidential and business sensitive information relating to financial data of the entity concerned, which are not publicly available. Public disclosure of this information would therefore seriously undermine the commercial interests of the third party concerned and could possibly affect its position in the market, as well as its relations with its competitors.

Therefore, we have blanked out the relevant parts of these documents as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

**B. Access denied.**

We regret to inform you that access to Documents 5-18 cannot be granted as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

Disclosure of Documents 5-16 is prevented by the exception of Article 4(2) first indent of Regulation 1049/2001 with regard to the protection of commercial interests of a natural or legal person, including intellectual property. After assessment, we have come to the conclusion that a disclosure could undermine the commercial interests of the third party for the reasons set out above under 3.A(ii). Therefore, access to these documents cannot be granted as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

Moreover, parts of Documents 5- 7, 9, 12, 13, and 16-18 contain personal data, in particular the names, functions of Commission staff members not pertaining to the senior management and names, functions, contact details of other natural persons, thus their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section 3A(i).

(i) **Protection of the public interest as regards public security**

Article 4(1)(a), first indent of Regulation 1049/2001 stipulates that access to a document shall be refused where disclosure would undermine the protection of the public interest as regards public security.

According to settled case-law, "the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001 [...] requires a margin of appreciation" for the institution (2). In this context, the Court of Justice has acknowledged that the institutions enjoy "a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest' (3).

Documents 6-13 and 15 contain sensitive information from a public security perspective, as they relate to the European Quantum Communication Infrastructure (EuroQCI), which aims at safeguarding sensitive data and critical infrastructures by integrating quantum-based systems into existing communication infrastructures, providing an additional security layer based on quantum physics. The EuroQCI will reinforce the protection of Europe’s governmental institutions, their data centres, hospitals, energy grids, and more, becoming one of the main pillars of the EU’s Cybersecurity Strategy for the coming decades. Disclosure of this information would affect the security envisaged by this initiative and could have negative consequences at the cooperation of the European Commission with the 27 Member States and the European Space Agency (ESA), for the development and the deployment of the EuroQCI.

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(2) See Judgment in Sison v Council, C-266/05 P, EU:C:2007:75, paragraph 35.

Based on the foregoing there is a real and non-hypothetical risk, that disclosure of these parts of the documents would undermine the protection of public interest, as regards public security. Therefore, access to Documents 6-13 and 15 is completely denied.

(ii)  Protection of the public interests as regards the financial, economic or monetary policy of the EU or a Member State

Article 4(1)(a), 4th indent of Regulation 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards the protection of the financial, economic or monetary policy of the EU or a Member State.

According to the case law, ‘[..] the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest [..]’ (4).

Documents 17 and 18 contain sensitive information regarding financial data relevant for the European Quantum Communication Infrastructure (EuroQCI). Disclosure of these documents would seriously affect the public interest as regards the financial, economic and monetary policy of the EU, for the reasons stated above under 3.B.(i). The risk is real and non-hypothetical. Therefore, access to Documents 17 and 18 must be completely denied.

(iii) Protection of the decision-making process

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘[a]ccess to a document, drawn up by an institution for internal use or received by the an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’

Documents 17 and 18 are covered by the abovementioned exception of the first subparagraph of Article 4(3) since they contain sensitive information relevant to ongoing procedures and discussions within the European Commission, for which the final decisions are not taken yet. They also contain considerations, reflections and views of the Commission services and of other parties.

The Commission services must be free to explore all possible options with regard to ongoing initiatives and policy processes. The risk of disclosing sensitive information regarding the Commission services’ preliminary views while the decision-making process on the issue at question is still ongoing would deter them from freely expressing their opinions and having frank, internal discussions. Speculations and misinterpretations of the public on the views, positions, considerations put forward in an early stage of the decision-making process would affect the exploration of different policy options and unduly restrict the Commission’s internal space to think, exposing the Commission to external pressure. The disclosure of Documents 17 and 18 would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

We have considered whether partial access could be granted to Documents 5-18. However, partial access is not possible considering that these documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

4. **OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(2) and Article 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. 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 documents (and parts thereof) 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 documents (and parts thereof) disclosed 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 documents. Please note that the Commission does not assume liability stemming from the reuse.

6. **CONFIRMATORY APPLICATION**

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 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 account (available only for initial requests submitted via the portal account), or 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

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures: (4)