



EUROPEAN COMMISSION

Brussels, 8.12.2020  
C(2020) 8988 final

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2020/5205**

Dear Mr Fanta,

I refer to your letter of 29 September 2020, registered on 30 September 2020, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

Please accept our apologies for this late reply.

**1. SCOPE OF YOUR REQUEST**

In your initial application of 2 September 2020, addressed to the Directorate-General for Informatics, you requested access to:

- a) ‘[a]ll documents (including memos, minutes, e-mails, contracts, etc.) related to the agreement between the Commission, SAP and T-Systems on 31 July 2020 on the development and deployment of a software platform for the cross-border exchange of coronavirus warnings (interoperability gateway for contact tracing apps);

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<sup>1</sup> OJ L 345, 29.12.2001, p. 94.

<sup>2</sup> OJ L 145, 31.5.2001, p. 43.

- b) [a]ll internal documents of the Commission (e.g. working group meeting minutes, memos, e-mails, etc.) and exchanges with member states and external stakeholders (i.e. Google, Apple, etc.) on the interoperability of contact tracing apps.’

The Directorate-General for Informatics has identified the following documents as falling under the scope of your request:

- 1) ‘SPA Enterprise License Agreement- Master Agreement template, reference Ares(2020)5001882 (hereafter ‘document 1’);
- 2) Notification Document template, reference Ares(2020)5001882 (hereafter ‘document 2’);
- 3) Personal Data Form, reference Ares(2020)5001882 (hereafter ‘document 3’);
- 4) The Inter-Institutional Framework Contract DI/07790<sup>3</sup> with SAP Belgium NV/SA of 14 November 2019 registered under reference Ares(2019)7052242 (hereafter ‘document 4’);
- 5) Annex I of the Framework Contract entitled ‘Contractor’s Final Offer’, reference Ares(2019)7052242 (hereafter ‘document 5’);
- 6) Annex V of the Framework Contract entitled ‘Order Form Template’, reference Ares(2019)7052242 (hereafter ‘document 6’);
- 7) Annex VII of the Framework Contract entitled ‘Service Level Agreement’, reference Ares(2019)7052242 (hereafter ‘document 7’);
- 8) Annex VIII of the Framework Contract entitled ‘ePrior Interchange Agreement’, reference Ares(2019)7052242 (hereafter ‘document 8’);
- 9) Annex IX of the Framework Contract entitled ‘EMAS Policy’, reference Ares(2019)7052242 (hereafter ‘document 9’).’

In its initial reply of 24 September 2020, the Directorate-General for Informatics informed you that it:

- granted full access to documents 1, 2 and 3,
- refused access to documents 4-9 on the basis of the exception provided for in the first indent of Article 4(2) (protection of the commercial interests) of Regulation (EC) No 1049/2001;
- does not hold any requested document falling under point b) of your initial request.

In your confirmatory application, you requested a review of this position, in particular as regards the Framework Contract. You underpin your request with arguments, which I will address in the corresponding sections below.

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<sup>3</sup> Hereafter ‘the Framework Contract’.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 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, I can inform you that:

- (wide) partial access is granted to documents 6, 8 and 9, subject only to the redaction of personal data, protected by virtue of the exception in Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of privacy and the integrity of the individual);
- (wide) partial access is granted to documents 4 and 7. The withheld parts of both documents are covered by the exceptions in Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of privacy and the integrity of the individual) and the first indent of Article 4(2) of Regulation (EC) 1049/2001 (protection of commercial interests);
- access is refused to document 5. The underlying exceptions are provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of privacy and the integrity of the individual) and the first indent of Article 4(2) of Regulation (EC) 1049/2001 (protection of commercial interests).

Finally, I confirm that the European Commission does not hold any requested document falling under point b) of your initial request.

### **2.1. Protection of privacy and the integrity of the individual**

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data’.

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>4</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, 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<sup>5</sup> (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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

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<sup>4</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as ‘*European Commission v The Bavarian Lager* judgment’) C-28/08 P, EU:C:2010:378, paragraph 59.

<sup>5</sup> OJ L 8, 12.1.2001, p. 1.

movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>6</sup> (hereafter ‘Regulation (EU) 2018/1725’).

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘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 [...] [the Data Protection] Regulation’<sup>7</sup>.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’<sup>8</sup>.

The requested documents contain personal data such as the names, surnames, contact details (email addresses, telephone numbers, office addresses and initials) of staff members of the European Commission not holding any senior management positions. The documents also include personal data of the third party individuals. Moreover, some documents also contain handwritten signatures.

The names<sup>9</sup> of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data<sup>10</sup>. This is

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<sup>6</sup> OJ L 295, 21.11.2018, p. 39.

<sup>7</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

<sup>8</sup> Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

<sup>9</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest.

It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your confirmatory application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subjects' legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, 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 the disclosure of the personal data concerned.

## **2.2. Protection of commercial interests of a natural or legal person**

Article 4(2) first indent of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of the commercial interests of a natural or legal person, including intellectual property [...]'.<sup>10</sup>

Firstly, I note that the first indent of Article 4(2) of Regulation (EC) No 1049/2001 must be interpreted consistently with Article 339 of the Treaty on 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'. Applying Regulation (EC) No 1049/2001 cannot have the effect of rendering the Article 339 of the Treaty on the Functioning of the European Union, over which it does not have precedence, ineffective.

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<sup>10</sup> Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

Secondly, the first indent of Article 4(2) of Regulation (EC) No 1049/2001 must be interpreted consistently with the provisions of the Financial Regulation<sup>11</sup> and its Rules of Application<sup>12</sup> relating to access to information and confidentiality, which were applicable at the time of the signature of the documents in question. Those provisions contain guarantees of confidentiality and limit the information to be provided in respect to public procurements. Furthermore, as neither Regulation (EC) No 1049/2001 nor the Financial Regulation contain any provision expressly giving one regulation primacy over the other, the right to disclosure of documents under Regulation (EC) No 1049/2001 cannot apply in contradiction with the specific confidentiality provisions laid down in the Financial Regulation and its Rules of Application, applicable at the time, as this would result in these provisions being deprived of their meaningful effect.

Furthermore, the General Court in its *Cosepuri*<sup>13</sup> judgement confirmed that Regulation (EC) No 1049/2001 and the Financial Regulation have different objectives and do not contain any provision expressly giving one regulation primacy over the other. Therefore, it is appropriate to ensure that each of those regulations is applied in a manner which is compatible with the other and which enables their coherent application.

Thirdly, in its judgment in Case T-439/08, the General Court ruled that ‘methodology and expertise [...] highlighted as part of the grant application, [...] relate to the specific know-how [...] and contribute to the uniqueness and attractiveness of applications in the context of calls for proposals such as that at issue, which was intended to select one or more applications, following in particular a comparative review of proposed projects’<sup>14</sup>.

As the Court of Justice explained, ‘in order to apply the exception provided for by the first indent of Article 4(2) of Regulation No 1049/2001, it must be shown that the documents requested contain elements which may, if disclosed, seriously undermine the commercial interests of a legal person.

That is the case, in particular, where the requested documents contain commercially sensitive information relating, in particular, to the business strategies of the undertakings concerned or to their commercial relations [...]’<sup>15</sup>. Furthermore, the Court of Justice recognised that, ‘[i]n order that information be of the kind to fall within the ambit of the obligation of professional secrecy, it is necessary, first of all, that it be known only to a limited number of persons. It must then be information whose disclosure is liable to

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<sup>11</sup> Regulation (EU, Euratom) No. 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No. 1605/2002, Official Journal L 298 of 26.10.2012, p.1, as amended.

<sup>12</sup> Commission Delegated Regulation (EU) No. 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No. 966/2012 of the European Parliament and the Council on the financial rules applicable to the general budget of the Union, Official Journal 362 of 31.12.2012, p.1, as amended.

<sup>13</sup> Judgment of the General Court of 29 January 2013, *Cosepuri Soc. Coop. pA v European Food Safety Agency (EFSA)*, T-339/10, EU:T:2013:38, paragraph 85.

<sup>14</sup> Judgment of the General Court of 21 October 2010, *Kalliope Agapiou Joséphidès v European Commission and Education, Audiovisual and Culture Executive Agency (EACEA)*, T-439/08, EU:T:2010:442, paragraph 127.

<sup>15</sup> Judgment of the General Court of 5 February 2018, *PTC Therapeutics International v European Medicines Agency (EMA)*, T-718/15, EU:T:2018:66, paragraph 85.

cause serious harm to the person who has provided it or to third parties. Finally, the interests liable to be harmed by disclosure must, objectively, be worthy of protection. The assessment as to the confidentiality of a piece of information thus requires the legitimate interests opposing disclosure of the information to be weighed against the public interest that the activities of the Community institutions take place as openly as possible<sup>16</sup>.

The requested Framework Contract and its Annexes are the result of negotiated procedure with reference DIGIT/A3/PN/2019/036 as initiated on 17/06/2018 by the European Commission. The subject matter of the framework contract is to set the conditions under which the customer may order licences on a variety of software, as well as maintenance and support. The contract was awarded on 22 October 2019 to SAP Belgium SA NV<sup>17</sup>.

Document 5, the Final Offer (SAP Software Licences Proposal) of 10 October 2019 submitted by SAP Belgium SA NV, describes in detail the composition of products and services developed by the contractor in order to tailor the needs of the European Commission and other EU institutions, agencies or other bodies (hereafter 'EUIs'), information about the prices quoted for such products and services, the concessions made by the contractor as regards the standard contractual terms, taking into account the status of the European Commission and the other EUIs, as major customers. It also includes the proposed actions to be conducted, methodologies, particular know-how, strategy and other specific information with competitive value, such as maintenance and support conditions, the detailed budget estimations and bank details. As recognised by the case-law of the General Court, there is a general presumption of non-disclosure of a bid of a tenderer<sup>18</sup>. That general presumption of non-disclosure of a bid in an open procurement procedure applies, per analogy and taking into account the specific features of a negotiated procedure, to this Final Offer. The reason for this analogy lies in the nature of the information contained in the SAP Software Licences Proposal. Indeed, the Final Offer contains, equally as a tender, information relating to methodologies, know-how, specific pricing, discounts and special offers and business strategies as to how the services will be provided. Such information undoubtedly constitutes knowledge, experience and specific know-how belonging to the entity that submitted the final offer. This know-how was taken into account by the European Commission when evaluating the proposal and, therefore, had a major impact on its selection. The public disclosure of such information would undermine the commercial interests of the applicant and it may distort competition, as it would give other potential applicants in future procurement procedures based on a negotiated procedure the possibility to copy from this proposal and to use it to support their own applications and negotiating strategies.

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<sup>16</sup> Judgment of the Court of First Instance of 30 May 2006, *Bank Austria Creditanstalt v Commission*, T-198/03, EU:T:2006:136, paragraph 71.

<sup>17</sup> SAP stands for 'Systems, Applications and Products'.

<sup>18</sup> For example: judgment of the General Court of 26 May 2016, *International Management Group v European Commission*, T-110/15, EU:T:2016:322, paragraph 30, Judgment of the General Court of 13 November 2015, *ClientEarth v European Commission*, Joined Cases T-424/14 and T-425/14, EU:T:2015:848, paragraph 65.

Furthermore, it can be presumed that the information concerned, as well as other information included in the proposal, was provided under the legitimate expectation that it would not be publically released. Public release of this information under Regulation (EC) No 1049/2001 would require disclosure of (part of) the submitted proposal. Please note that, since the Final Offer is covered by the general presumption of non-disclosure, the European Commission does not need to consider a partial access in such a case.

Indeed, the biggest asset of the company in question is its data, the intellectual property and its special know-how. Please note that this information is known to a limited number of people. The companies have a legitimate right to expect that the information they supply to the European Commission will not be disclosed to the public. Disclosure of the withheld parts of the Framework Contract, its Service Level Agreement and full disclosure of the SAP Software Licences Proposal would lead to a situation where the company would lose its trust in the European Commission's reliability and would become reluctant to cooperate with the institution.

Finally, their disclosure would seriously undermine the commercial interests of the contractor, including its intellectual property, as it would negatively affect its commercial activity, in particular in the competitive context. Disclosure of such information would be particularly likely to disrupt and adversely affect the business operations and the commercial interest of the contractor.

The General Court has specifically confirmed on several occasions, that giving access to information particular to an undertaking which reveals its expertise, is capable of undermining the commercial interests of this undertaking<sup>19</sup>.

Consequently, there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the commercial interests of the contractor. I conclude, therefore, that access to document 5 and the withheld parts of documents 4 and 7 must be denied on the basis of the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

### **3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your confirmatory application, firstly, you argued that, I quote '[...] I made my request in my role as journalist covering the EU institutions and the interoperability framework for contact tracing apps in particular. The framework agreement has been subject to considerable public interest in various European countries and generally speaking, there clearly is strong public interest in media scrutiny on the subject matter. Further, the

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<sup>19</sup> See Judgment of the General Court of 11 July 2018, *Rogesa v Commission*, T-643/13, EU:T:2018:423, paragraph 70 and Judgment of the General Court of 25 September 2018, *Amicus Therapeutics v European Medicines Agency EMA*, T-33/17, EU:T:2018:595, paragraph 75.



Commission has insisted that purchases made amid the Corona pandemic would be open to equal scrutiny as other public purchases by the EU.’

Please note that this Inter-Institutional Framework Contract was signed in November 2019, months before the outbreak of the COVID-19 pandemic. It covers the licensing of a wide range of products of SAP Belgium NV/SA by the European Institutions. Under this Framework Contract, each Institution and/or Directorate-General can sign a specific contract, with which they can agree on specific conditions on the licensing of specific products.

Therefore, the Framework Contract contains more general conditions of the services offered by the contractor and it does not relate only to the specific purchase of services related to the interoperability of contact tracing apps through specific contract (Order Form) signed by the European Commission in the context of the COVID-19 pandemic.

Secondly, in your confirmatory application you state that, I quote ‘[...] I would like to point out that any potential business partner has certainly heard of Regulation 1049/2001 and is aware of the legal obligation of the Commission to share information on public purchases. This obligation was created in the first place precisely so that the public can make sure that, as the Commission states, public money is spent in accordance with the principle of sound financial management.’

This claim, however, is of a general nature and concerns the sound financial management in public expenditure without any reference to the specific circumstances that show that there is an overriding public interest which justifies the disclosure of the documents concerned<sup>20</sup>. As far as information concerning procurement procedures is concerned, it should be also underlined that according to Article 38 of the Financial Regulation, the European Commission shall make available, in an appropriate and timely manner, information on recipients of funds financed from its budget, including the information on the amounts committed by the European Commission every year as a result of procurement procedures. This obligation is implemented with the publication of the relevant information in the Financial Transparency System of the European Commission<sup>21</sup> which is fully operational and all relevant information regarding the procurement process can be found there by using relevant filters. In addition, a contract award notice is made available to the public for the contracts awarded by the European Institutions on Europa website<sup>22</sup>. This way the European Commission invites the general public to review the application of the principle of sound financial management.

However, the General Court held that ‘the transparent conduct of public tenders procedures, which aims to make possible the monitoring of compliance with the relevant

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<sup>20</sup> See for example Judgment of the General Court of 5 December 2018, *Campbell v European Commission*, T-312/17, , EU:T:2018:876, paragraph 58.

<sup>21</sup> [https://ec.europa.eu/budget/fts/index\\_en.htm](https://ec.europa.eu/budget/fts/index_en.htm)

<sup>22</sup> <https://ted.europa.eu/udl?uri=TED:NOTICE:512178-2019:TEXT:EN:HTML>

rules and principles does not require the publication of documents or information relating to the know-how, methodology or business relationships of the tenderers'<sup>23</sup>.

Thirdly, in your confirmatory application you argue that, I quote' [...] with regard to commercial interests, the European Ombudsman has found that such requests for information pose the following problems: not all information about a company is commercially sensitive, so a test should be performed each time to conclude whether the exception applies in this case. Even in a few cases where such tests were made, the Ombudsman has found insufficient grounds for refusal, such as Ombudsman cases 676/2008/RT 07 July 2010 and Case: 181/2013/AN 16 February 2015. I would like the Commission to respond in particular to this point and point out how exactly the framework agreement passes the test of being commercially so sensitive it can not be released to the public.'

Following a concrete and individual assessment of the content of the requested Framework Contract at the confirmatory stage, a wide partial access has been granted to this document. However, as described in detail in section 2 of this confirmatory decision, some parts of the Framework Contract are covered by the exceptions laid down in the first indent of Article 4(2) and 4(1) (b) of Regulation (EC) NO 1049/2001.

Finally, I would like to refer you to the judgment in the *Strack* case<sup>24</sup>, where the Court of Justice ruled that 'in order to establish the existence of an overriding public interest in transparency, it is not sufficient to merely rely on that principle and its importance, but that an applicant has to show why in the specific situation the principle of transparency is in some sense especially pressing and capable, therefore, of prevailing over the reasons justifying non-disclosure.'

I have not been able, based on my own analysis, to establish the existence of any overriding public interest in disclosure of the (withheld part of) documents in question. In consequence, I consider that in this case there is no overriding public interest that would outweigh the public interest in safeguarding the protection of commercial interests protected by the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

The fact that the documents relate to an administrative procedure and not to any legislative act, for which the Court of Justice has acknowledged the existence of wider openness<sup>25</sup>, provides further support to this conclusion.

Please also note that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

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<sup>23</sup> Judgment of the General Court of 22 May 2012, *Sviluppo Globale v Commission*, T-6/10, EU:T:2012:245, paragraph 88.

<sup>24</sup> Judgment of the Court of Justice of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraphs 128-131.

<sup>25</sup> Judgment of the Court of Justice of 29 June 2010, *Commission v Technische Glaswerke Ilmenau GmbH*, C-139/07 P, EU:C:2010:376, paragraphs 53-55 and 60; *Commission v Bavarian Lager* judgment, cited above, paragraphs 56-57 and 63.

#### 4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting partial access to the requested documents.

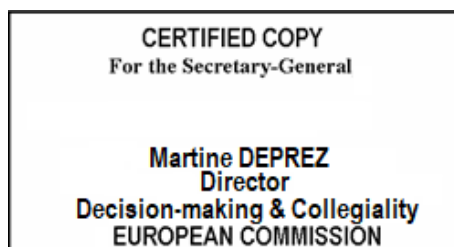
Concerning documents 4 and 7, the Framework Contract and its Service Level Agreement, wide partial access has been granted to them, as explained above. The withheld parts are covered by the exception of the first indent of Article 4(2) (protection of commercial interests) and Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, as explained above.

As stated by the Court of Justice, where the document requested is covered by a general presumption of non-disclosure, such document does not fall within an obligation of disclosure, in full, or in part<sup>26</sup>. Therefore, no partial access has been considered for the Final Offer (document 5) as it is covered in its entirety by the invoked exceptions to the right of public access.

#### 5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European 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*  
*Ilze JUHANSONE*  
*Secretary-General*

Enclosures: (4)

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<sup>26</sup> Judgment of the Court of Justice of 28 June 2012, *European Commission v Éditions Odile Jacob*, C-404/10 P, EU:C:2012:393, paragraph 133.