



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

The Director-General

Brussels,
DG CONNECT/RM/AS/pef

Mr. Raptis

Email: [ask+request-913-
xxxxxxxx@xxxxxxxx.xxx](mailto:ask+request-913-xxxxxxxx@xxxxxxxx.xxx)

Subject: Your application for access to documents – Ref GestDem No 2013/5208 under Regulation 1049/2011 regarding public access to European Parliament, Council and Commission documents

Dear Sir,

We refer to your email dated 19 October 2013 wherein you make a request for access to documents, registered on 21 October 2013 under the above mentioned reference number.

1. DG CONNECT (former INFISO) letters notifying the external financial audits to the E-TEN participants.

We have identified document(s) corresponding to the criteria set out in your request.

Please find enclosed the document(s) in question. (**Annex1**)

Please note that only partial access can be granted. The expunged data relates to commercial interests and personal data, both protected by the exceptions foreseen in Article 4 of Regulation 1049/2001.

In accordance with Article 4(2) first indent of Regulation 1049/2001 regarding public access to documents "*the institution shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property.*"

In addition, pursuant to Article 4(1) b) "*the institution 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.*"

The exception foreseen in Article 4(1) is an absolute exception not balanced by an overriding public interest.

We have examined to which extent exceptions laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in disclosure. Such an interest must firstly be of a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2).

We consider that the prevailing interest in this case is to protect the commercial interests of natural and legal persons and also the personal data of the individuals concerned.

Therefore, we have concluded that only partial access to the document(s) requested can be granted.

2. All annexes to the letters under (1), including the Privacy Statement.

Please find enclosed the document(s) requested. (**Annex1**)

3. DG CONNECT (former INFSO) documents notifying the audit firm about the conduct of the external financial audits.

We have identified document(s) corresponding to the criteria set out in your request.

Please find enclosed the document(s) in question. (**Annex2**)

Please note that only partial access can be granted. The expunged data relates to commercial interests and personal data, both protected by the exceptions foreseen in Article 4 of Regulation 1049/2001.

In accordance with Article 4(2) first indent of Regulation 1049/2001 regarding public access to documents "*the institution shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property.*"

In addition, pursuant to Article 4(1) b) "*the institution 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.*"

The exception foreseen in Article 4(1) is an absolute exception not balanced by an overriding public interest.

We have examined to which extent exceptions laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in disclosure. Such an interest must firstly be of a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2).

We consider that the prevailing interest in this case is to protect the commercial interests of natural and legal persons and also the personal data of the individuals concerned.

Therefore, we have concluded that only partial access to the document(s) requested can be granted.

4. The correspondence between DG CONNECT and the audit firm about the organisation of the on-the-spot audits.

We have identified document(s) corresponding to the criteria set out in your request.

Please find enclosed the document(s) in question. (**Annex3 and 3A**)

Please note that only partial access can be granted. The expunged data relates to commercial interests and personal data, both protected by the exceptions foreseen in Article 4 of Regulation 1049/2001.

In accordance with Article 4(2) first indent of Regulation 1049/2001 regarding public access to documents *"the institution shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property."*

In addition, pursuant to Article 4(1) b) *"the institution 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."*

The exception foreseen in Article 4(1) is an absolute exception not balanced by an overriding public interest.

We have examined to which extent exceptions laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in disclosure. Such an interest must firstly be of a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2).

We consider that the prevailing interest in this case is to protect the commercial interests of natural and legal persons and also the personal data of the individuals concerned.

Therefore, we have concluded that only partial access to the document(s) requested can be granted.

5. The letters drawn up by the audit firms and held by DG CONNECT, which the audit firms dispatched preliminary draft and final audit reports to the auditees.

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

6. DG CONNECT letters dispatching to the auditees final reports of the audit firms, or expressly approving the final audit reports of the audit firms.

We have identified document(s) corresponding to the criteria set out in your request.

Please find enclosed the document(s) in question. (Annex4)

Please note that only partial access can be granted. The expunged data relates to commercial interests and personal data, both protected by the exceptions foreseen in Article 4 of Regulation 1049/2001.

In accordance with Article 4(2) first indent of Regulation 1049/2001 regarding public access to documents *"the institution shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property."*

In addition, pursuant to Article 4(1) b) *"the institution 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."*

The exception foreseen in Article 4(1) is an absolute exception not balanced by an overriding public interest.

We have examined to which extent exceptions laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in disclosure. Such an interest must firstly be of a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2).

We consider that the prevailing interest in this case is to protect the commercial interests of natural and legal persons and also the personal data of the individuals concerned.

Therefore, we have concluded that only partial access to the document(s) requested can be granted.

7. The documents drawn up by the Commission services setting out the instructions of DG CONNECT (former INFSO) to the respective audit firms to process personal data of third parties in relation to the auditees, that is to say employees and services providers the auditees charged to the E-Ten audited projects. Such documents must be Audit Manuals, or Audit Handbooks, or similar documents, which DG CONNECT (former INFSO) was aware, or ought be aware, that the audit firms were holding, while also the audit firms had reasonably presumed that DG CONNECT (former INFSO) expected that such instructions were to be followed.

The contract signed by the Commission with the external audit firms is based on standard public procurement procedures following the provisions of the Financial Regulation and Regulation 45/2001.

According to the contract between the Commission and the external audit firms *"any personal data included in or relating to the Contract, including its execution shall be processed pursuant to Regulation (EC) No 45/2001 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. The data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Directorate-General or agency purchasing the service via a specific contract without prejudice to*

possible transmission to the bodies charged with a monitoring or inspection task in application of Union law. The Contractor shall have the right of access to his personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his personal data, he should address them to the person mentioned under point I.7. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

Where the Contract requires the processing of personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

The data shall be confidential within the meaning of Regulation 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risk inherent in the processing and to the nature of the personal data concerned in order to:

a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:

aa) unauthorised reading, copying, alteration or removal of storage media;

ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;

ac) unauthorised persons from using data-processing system can access only the personal data to which their access right refers;

b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

c) record which personal data have been communicated, when and to whom;

d) ensure that personal data being processed on behalf of the third parties can be processed only in the manner prescribed by the contracting institution or body;

e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;

f) design its organisational structure in such a way that it meets data protection requirements."

In addition, before an audit is undertaken, the beneficiary receives a pre-info letter announcing the audit which includes the Privacy Statement in annex containing all the information provided for by Articles 11 and 12 of Regulation 45/2001.

8. The notification of audit firms to the respective national supervising authorities pursuant to the national law provisions transporting Article 18(1) or Directive

95/46/EC. Such notification is the equivalent of an Article 25 of Regulation No 45/2001 prior notification of a Community Institution or body.

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

Please be informed that the processing of personal data by EU institutions and bodies is not governed by the national legislation of the respective Member State, but by Regulation 45/2001. Whenever ex post controls are performed by external audit firms, the latter are handling the processing of data on behalf of the Commission and subject to a contract between the external audit firm and the Commission which includes specific contractual provisions explicitly stipulating that Regulation 45/2001 and not the national legislation is applicable. Hence, there was no obligation to comply with the national legislation.

Moreover, please note that external audits can be carried out either by the Commission or outsourced to external audit firms. Outsourcing to external audit firms is done on a contractual basis in accordance with public procurement rules.

Please also refer to our response under point 7.

9. Notwithstanding request 7, the documents laying down the controller's instructions to the audit firms as provided by Article 23(2)(a) "the processor shall act only on instructions from the controller". It is clarified that the request does not concern the documents with the "contractual obligations" but the controller's "instructions".

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

Please refer to our responses under points 7 and 8.

10. Inasmuch the preliminary, draft and final audit reports have personal data of third parties to the audited E-Ten projects, the documents drawn up by the audit firms pursuant to the national law provisions transposing Article 11(1) of Directive 95/46/EC into national law. Those provisions are similar to Article 12(1) of Regulation No 45/2001.

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

Please be informed that the processing of personal data by EU institutions and bodies is not governed by the national legislation of the respective Member State, but by Regulation 45/2001. Whenever ex post controls are performed by external audit firms, the latter are handling the processing of data on behalf of the Commission and subject to a contract between the external audit firm and the Commission which includes specific contractual provisions explicitly stipulating that Regulation 45/2001 and not the national legislation is applicable. Hence, there was no obligation to comply with the national legislation.

11. Inasmuch the final audit reports has personal data of third parties to the audited E-Ten projects, the documents DG CONNECT drew up pursuant to Article 12(1) of Regulation No 45/2001 (e.g. on the occasion of storing electronically the audit report in an IT system providing full-text indexing and retrieval facilities).

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

Before an audit is undertaken, the beneficiary receives a pre-info letter announcing the audit which includes the Privacy Statement in annex containing all the information provided for by Articles 11 and 12 of Regulation 45/2001.

It is the beneficiary's obligation to inform its employees and subcontractors about the audit to take place and also about the data protection provisions foreseen in the Privacy Statement.

12. Regarding the personal data processed by the audit firms in the context of the on-the-spot auditing activities, the documents DG CONNECT drew up in order to verify and validate that the audit firms have been compliant with the national data personal protection legislation.

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

Please be informed that the processing of personal data by EU institutions and bodies is not governed by the national legislation of the respective Member State, but by Regulation 45/2001. Whenever ex post controls are performed by external audit firms, the latter are handling the processing of data on behalf of the Commission and subject to a contract between the external audit firm and the Commission which includes specific contractual provisions explicitly stipulating that Regulation 45/2001 and not the national legislation is applicable. Hence, there was no obligation to comply with the national legislation.

13. Notwithstanding request 12, the documents DG CONNECT drew up in order to verify and validate that the audit firms have been compliant with the national data personal protection legislation in activities other than the on-the-spot auditing activities.

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

Please also refer to our response under point 12.

14. Insofar the audit firms were processors within the meaning of Regulation 1045/2001, the documents DG CONNECT drew up in order to verify and validate that the audit firms have been compliant with Regulation 45/2001.

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

15. The documents DG CONNECT drew up in order to verify and validate that its own personal data processing – e.g. final audit report stored in the DG CONNECT information systems enabling (a) ad hoc retrieval of textual information, (b) full-text indexing and retrieval, (c) data-mining of the kind of "Pluto" has been compliant with Regulation 45/2001.

We regret to inform you that no document(s) were found that correspond to the description given in your application. We are, therefore, unable to handle your application.

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

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 Unit SG-B-5
BERL 5/327
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-Signed)
Robert Madelin
p.p.
Zoran Stancic