Subject: Your application for access to documents – case 2022/5596

Dear Ms Indiano,

We refer to your request for access to Commission documents registered on 30 September 2022 under the above-mentioned reference number.

Following the receipt of your request and its initial assessment, we concluded that your request concerned a very large number of documents, which should be assessed individually, whereas such analysis could not be carried out within the normal time limit set out in Article 7 of Regulation (EC) No 1049/2001. In view of that, we replied to your request on 05 October 2022 and proposed a fair solution by reducing the scope of your request for access to documents and extending the timeline.

In the absence of a reply within the deadline indicated in the letter sent on 05 October 2022, we unilaterally restricted the scope of your application to those parts that can be dealt with within the extended deadline of 30 working days, counting from the registration of your application on 30 September 2022. Therefore, the reduced scope of your request concerns all specific contracts and grants awarded for the RRP-related Italian technical support requests that the Commission selected for funding under the TSI Regulation.¹

The following documents fall within the scope of your reduced request:

— Specific contract No. REFORM/SC2021/036 of 12 October 2021 (ARES(2021)6115791);

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that the requested documents can be partially disclosed. Some parts of the documents have been removed as their disclosure is prevented by exceptions to the right of access laid down in the fourth indent of Article 4(1)(a), Article 4(1)(b), in the first and third indent of Article 4(2) and in the first subparagraph of Article 4(3) of this Regulation. The redacted parts of the

documents contain personal data of various natural persons and commercially sensitive information of the companies that submitted their offers.

Disclosure of these parts would undermine the protection of:

- the public interest as regards the financial, monetary or economic policy of the Union or a Member State (the fourth indent of Article (4)(1)(a) of Regulation (EC) 1049/2001),
- the decision-making process of the Commission (the first subparagraph of Article 4(3) of Regulation (EC) 1049/2001),
- the purpose of inspections, investigations and audits (the third indent of Article (4)(2) third indent of Regulation (EC) 1049/2001),
- privacy and the integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data (Article (4)(1)(b) of Regulation (EC) 1049/2001 and
- commercial interests of a natural or legal person, including intellectual property (first indent of Article 4(2) of Regulation (EC) 1049/2001).

Firstly, access to Annex I – Request for Services – of the specific contracts listed above is prevented by the fourth indent of Article 4(1)(a) of Regulation (EC) 1049/2001, which refers to ‘the protection of the financial, monetary or economic policy of the Union or a Member State’. The technical support provided by the Commission in accordance with the TSI Regulation feeds into the political process that belongs solely to the Italian institutions regarding not only the design and implementation of the reforms, but also the decision of starting or not a certain reform process. In addition, each Request for Services is based on sensitive information related to internal procedures in the relevant Italian authorities and to the relevant current or future possible policies in Italy. Disclosure of the information - included in Annex I attached to the specific contracts listed above - to the public is likely to have a negative impact on the design and implementation of reforms, which undermines the public interest as regards financial, monetary or economic policies of Italy.

Consequently, I conclude that pursuant to the fourth indent of Article 4(1)(a) of Regulation (EC) No 1049/2001, Annex I to each specific contract cannot be disclosed.

Secondly, the non-disclosure of Annex I – Request for Services – of all specific contracts falls under the exception provided by the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001, and more specifically, refers to the Commission’s decision-making process. Support measures, which the Commission provides to Italy under the TSI Regulation, are based on requests for support submitted by Italy. Requests for Services are documents drawn-up by the Commission as part of the technical support process it carries out in response to the Member State request. The disclosure at this stage of the information included in Annex I would reveal policy options, which are currently under consideration and it would thus seriously undermine the Commission’s decision-making process as regards the implementation of the technical support. In addition, given that the technical support provided relates to reforms included in the national Recovery and Resilience Plan, the disclosure would also undermine the assessment by the Commission of the progress on the achievement of the milestones and targets set under the Recovery and Resilience Plan of Italy.
Consequently, I conclude that, pursuant to the first subparagraph of Article 4(3) of Regulation (EC) 1049/2001, to disclose the request for services at this stage would seriously undermine the technical support process of the Commission.

Thirdly, the disclosure of the information included in Annex I would undermine the protection of the purpose of investigations as provided for by the third indent of Article (4)(2) of Regulation (EC) 1049/2001. This information feeds into the Commission procedure by which technical support is provided to the concerned Member State. As parts of the requested documents relate to ongoing activities of the Commission in collecting and analysing technical information in order to enable the institution to adopt a final position and provide advice and recommendations in the framework of the request for technical support submitted by the Member State, the disclosure of the information included in Annex I is also prevented by this exception.

Consequently, I conclude that, pursuant to the third indent of Article (4)(2) of Regulation (EC) 1049/2001, Annex I to each specific contract cannot be disclosed.

Fourth, a complete disclosure of the specific contracts and the annexes thereof, which were awarded for the RRP-related Italian technical support requests that the Commission selected for funding under the TSI Regulation, is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initiats and contact information of Commission staff members not pertaining to the senior management;
- the names/initiats and contact details of other natural persons;
- handwritten signatures/abbreviated signatures of natural persons.

Article 9(1)(b) of the Regulation (EU) 2018/1725 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 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) of Regulation (EC) No 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.

Lastly, the non-disclosure of Annex II of specific contracts, which were awarded for the RRP-related Italian technical support requests that the Commission selected for funding under the TSI Regulation, falls under the exception of the first indent of Article 4(2) of Regulation (EC) 1049/2001, and more specifically refers to ‘the protection of commercial interests of a natural or legal person, including intellectual property’.

The tender (for specific contracts) contain information relating to methodologies, know-how, specific pricing and business strategies as to how the services will be provided. Disclosure to
the public of such information relating to the execution of the service would undermine the protection of the expertise, know-how, strategy and creativity and thus the contractor’s commercial strength, as it could be used by competitors in future similar procedures, to the detriment of the legal persons concerned. Such disclosure could result in distortion of fair competition in any future procedures. For this reason, the pages containing the above-mentioned Annexes have been eliminated from the specific contracts.

Additionally, the access to the contractors’ bank account details contained in the specific contracts would undermine the integrity of financial operations of the entity they belong to, and thus its commercial interests.

Please note that the amounts of the specific contracts signed in 2022 will be published in the Financial Transparency System by 30 June 2023, in accordance with Article 38 of the Financial Regulation.

The exceptions laid down in Article 4(2) and Article 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

We examined whether there could be an overriding public interest in disclosure of the above, but we have not been able to identify such an interest. Consequently, I conclude that, pursuant to the first and third indent of Article 4(2) and Article 4(3) of Regulation (EC) 1049/2001, access cannot be granted to parts of the requested documents.

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

- by asking for a review via your portal account (available only for initial requests submitted via the portal account),
- or by mail:
  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,

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Annexes:

— Specific contract No. REFORM/SC2021/036 of 12 October 2021 (ARES(2021)6115791);