GUIDANCE NOTE
ACCESS TO INFORMATION AND DOCUMENTS RELATED TO PROCUREMENT AND GRANTS

I. PURPOSE, LEGAL BASES AND DEFINITIONS

1. PURPOSE AND LEGAL BASES

The objective of this document is to provide guidance to services on how to deal with requests for public access to documents under Regulation (EC) No 1049/2001 or information requests in relation to grants and procurement. The scope of the note is limited to grants and procurement directly managed by the Commission or executive agencies, so indirect management and shared management are not covered. Nor does this guidance note deal with (pro-active) publication obligations in the framework of grant award and procurement procedures, which are covered by Articles 163 and 194 of the Financial Regulation.

In procurement and/or grant award procedures, unsuccessful grant applicants, candidates or tenderers often request access to documents and/or to information concerning these procedures.

The Financial Regulation includes specific provisions on the information that participants can access at different stages of the procedure. Such access is considered to be privileged access to information, because only specific parties can ask for it. You can find details about this kind of access under point 2.

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3 Under the management mode of indirect management, the European Commission delegates budget execution tasks to several types of partners, for example, international organisations, Decentralised Agencies and Public-Private Partnerships, National Agencies, Specialised Union Bodies or third counties, for details see: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/indirect/Pages/indirect-management.aspx.
4 Under the shared management mode, the Commission relies on the Member States to implement certain policies, for details see: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/shared-management.aspx.
5 This guidance applies to any grant directly managed by the Commission or executive agencies, including the Connecting Europe Facility Programme.
Contrary to privileged access to information, *public access to documents according to Regulation (EC) No 1049/2001* is a general right which does not depend on whether the applicant was a candidate, a tenderer or a grant applicant.

Grant applicants, candidates or tenderers often base their requests for access to documents and/or information in procurement and/or grant procedures both on the Financial Regulation and on Regulation (EC) No 1049/2001.

- The legal basis of the reply (Financial Regulation and/or Regulation (EC) No 1049/2001) depends on the specific circumstances and on the wording of the applicant’s request:
  - If the applicant is entitled to privileged access under the Financial Regulation and does not explicitly refer to the right of public access to documents and/or Regulation (EC) No 1049/2001, please handle the request exclusively under the provisions of the Financial Regulation;
  - If, in addition, the applicant invokes Regulation (EC) No 1049/2001, the request will have to be assessed also under this angle;
  - In case of doubt, please ask the applicant to clarify the legal basis on which the request for access is being made, any decision refusing access should state the applicable procedural remedies.

- Depending on the legal basis relied upon to request access, applicants have indeed different legal remedies to challenge a decision to refuse access:
  - Applicants for access to documents under Regulation (EC) No 1049/2001 who wish to challenge the initial decision to refuse full or partial access to the requested documents are entitled to submit a confirmatory application for access to documents against the initial decision on the basis of Article 7 (2) of Regulation (EC) No 1049/2001.
  - Applicants for privileged access on the basis of the Financial Regulation who wish to challenge the decision can lodge an action before the General Court for its annulment.

The *Financial Regulation* provides for privileged access to the following information for interested parties:

- in procurement procedures:
  - Obligation of the contracting authority to inform all candidates or tenderers whose tender was rejected of the grounds on which the rejection decision was taken;
  - Obligation to inform the successful tenderer of the award decision;

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7 This decision will be subject to proceedings before the General Court or to a complaint with the European Ombudsman under the conditions provided respectively under Articles 263 and 228 of the Treaty on the Functioning of the European Union.

8 See Article 170(2) of the Financial Regulation and point 31.1 of Annex 1 to the Financial Regulation.
Specific right of access to information, upon written request by tenderers who are not in a situation of exclusion, who are not rejected under Article 141 and whose tenders are compliant with the procurement documents. Those tenderers can have access to the following:

- Name of the successful tenderer; and
- Characteristics and relative advantages of the successful tender;
- Price paid or contract value, whichever is appropriate.

- In grant award procedures:

Obligation to inform grant applicants of the award or rejection decision and its justification (for the cases where the application is rejected).

Regulation (EU) 2018/1725 provides the general EU framework on data protection and applies in the context of both requests for access to documents under Regulation (EC) No 1049/2001 and for privileged access under the Financial Regulation.

The Code of Good Administrative Behaviour governs requests for information (as opposed to documents).

2. DEFINITIONS

For the purpose of this guidance:

- ‘Information’ means any news, knowledge or data not necessarily available in written, visual, oral, electronic or any other form. Requests for information may only concern news, knowledge or data, which cannot be found in a single document. Typically, requests for information refer to a number of questions, which can be only replied from a compilation of information from several documents;

- ‘Document’ means, according to Article 3(a) of Regulation (EC) No 1049/2001, ‘any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording) concerning a matter relating to the policies, activities and decisions falling within the institution’s sphere of responsibility’;

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9 See Point 31.1 of the Annex I to the Financial Regulation.
10 See Article 170(3) Financial Regulation and point 31.2 of Annex 1 to the Financial Regulation.
11 See Article 200(7) of the Financial Regulation.
13 Article 57 of the Financial Regulation stipulates the conditions concerning transfers of personal data for audit purposes.
‘Applicant for access to documents’ means any person who requests documents under Regulation (EC) No 1049/2001;
‘Grant applicant’ means a person who has submitted a grant application in response to a call for proposals for a grant award procedure;
‘Candidate’ means an economic operator that has sought an invitation or has been invited to take part in a procurement procedure in two steps;
‘Tenderer’ means an economic operator who has submitted a tender in response to a procurement procedure;
‘Contractor’ means an economic operator with whom a public contract has been signed;
‘Beneficiary’ means a natural person or an entity with or without legal personality with whom a grant agreement has been signed.

This note refers to grant applicants, candidates, tenderers, contractors and beneficiaries as interested parties. Their rights depend on the specific provisions of the Financial Regulation.

II. ACCESS TO INFORMATION IN PROCUREMENT AND GRANTS IN THE CONTEXT OF THE FINANCIAL REGULATION

1. PUBLICLY AVAILABLE INFORMATION

Both procurement and grant award procedures are subject to the publicity and transparency requirements laid down in the Financial Regulation, notably:

✓ Advertising or ex-ante publicity of procurement procedures\(^{15}\);
✓ Publication of calls for proposals\(^{16}\); and
✓ Ex-post publicity requirements\(^{17}\).

➢ Therefore, the Directorates-General and Departments should verify first whether the information/documents requested are already public.

2. PRIVILEGED ACCESS OF INTERESTED PARTIES TO INFORMATION IN PROCUREMENT PROCEDURES (ARTICLE 170 OF THE FINANCIAL REGULATION)

This part of the guidance concerns solely access to information by interested parties in the framework of procurement and grants, as provided for in the Financial Regulation. (The Financial Regulation indeed refers only to access to information and not access to documents.)

Other basic acts may provide for privileged access, for instance by the Programme Committee to the award decision for certain grants.\(^{18}\) These rights of access are specific to each basic act and are not covered by this note.

\(^{15}\) In accordance with points 2-5 of Annex 1 to the Financial Regulation.
\(^{16}\) In accordance with Article 189 of the Financial Regulation.
\(^{17}\) In accordance with Article 38 of the Financial Regulation.
2.1 INFORMATION ON REJECTED REQUESTS TO PARTICIPATE OR TENDERS

The contracting authority has the obligation to provide full information to an unsuccessful candidate or tenderer about the grounds and the full reasons (usually copied from the evaluation report) underlying the decision to reject its request to participate or tender. The candidate or tenderer does not need to request any of this information in writing and has a right to know from the outset.

To this end, DG BUDG provides model notification letters, which provide for the inclusion of excerpts from the evaluation report, as well as the duration of the standstill period and the available legal remedies.

2.2 UPON REQUEST PRIVILEGED INFORMATION ON THE CHARACTERISTICS AND RELATIVE ADVANTAGES OF THE SUCCESSFUL TENDER

Article 170(3) (a) of the Financial Regulation provides that ‘[t]he contracting authority shall inform each tenderer who is not in an exclusion situation, whose tender is compliant with the procurement documents and who makes a request in writing, of … the name of the tenderer, or tenderers in the case of a framework contract, to whom the contract is awarded and, except in the case of a specific contract under a framework contract with reopening of competition, the characteristics and relative advantages of the successful tender, the price paid or contract value, whichever is appropriate.’

This information is provided:

- on a privileged basis, which means that only the specific parties fulfilling the conditions indicated in Art. 170(3)(a) of the Financial Regulation can obtain it;
- upon written request;
- during the procurement procedure, even before signature of the contract.

If the contracting authority receives such a request, it must provide the information about the successful tender as soon as possible and at the latest within 15 days of receipt of the request.

The information to be provided includes:

✓ the name of the successful tenderer (including the names of the different legal entities in case of joint tenders);
✓ the global contract price (not unit or detailed prices which are part of the commercial secrets of the tenderer) or contract value (for framework contracts);
✓ the break-down of points and comments of the evaluation per criterion on the winning offer, as provided for in the evaluation report, except for parts which need to be redacted in accordance with the last subparagraph of Article 170(3) of the Financial Regulation;

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18 In some programmes (e.g. Connecting Europe Facility, Horizon 2020), award decisions for grants are subject to comitology. The Programme Committee thus receives, on a privileged basis, certain information additional to the award decision.
19 See Article 170(2) of the Financial Regulation and the second subparagraph of point 31.1 of Annex 1 to the Financial Regulation.
20 Point 31.2 of Annex 1 to the Financial Regulation.
21 These parts can be negative comments on the offer included in the report whose disclosure would harm the reputation of the successful tenderer.
the total score and the comparative ranking of the various, number of tenderers who participated in the procedure, exactly as provided for in the evaluation report, except for the names of unsuccessful tenderers that can be redacted for protection of their commercial interests and to avoid distortion of fair competition in future procedures.

At this stage of the procedure, provided that full information is given, it is not required to provide the evaluation report itself before the contract is signed. Nevertheless, it is important to provide exactly the information as written originally in the evaluation report (including the reasons, etc.).

Interested parties can also request the above mentioned information after signature of the contract:

- However, in that case, this will not be considered privileged access in the sense of Article 170(3)(a) of the Financial Regulation; and

- The document containing this information may be disclosed based upon Regulation (EC) No 1049/2001, provided that it is not covered by any exception laid down in its Article 4.

22 See Judgment of 13 December 2013 in Case T-165/12, European Dynamics Luxembourg SA v European Commission, EU:T:2013:646, paragraphs 50-51. The General Court held that the evaluation report does not need to be provided for requests under former Article 170(3), currently article 170(3) of the Financial Regulation (see Judgments of 12 July 2007 in Case T-250/05, Evropaiki Dynamiki - Proigmena Sistimata Tilepikoinonion Pliroforikis kai Tilematikis AE v Commission of the European Communities, of 9 September 2010 in Case T-63/06, Evropaiki Dynamiki - Proigmena Sistimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), EU:T:2010:368, paragraphs 87-89): it is only necessary to state the reasons for which the tenderer was rejected. Although the Judgement of 10 September 2008 in Case T-59/05, Evropaiki Dinamiki – Proigmena Sistimata Tilepikoinonion Pliroforikis kai Tilematikis AE v Commission of the European Communities, EU:T:2008:326, paragraphs 134-135 (confirmed on appeal by the Court of Justice C-476/08P, Evropaiki Dynamiki vs. European Commission, ECR 2009 page L00207) considered desirable that the Commission systematically provides, to the tenderers, who have made a written request, a copy of the evaluation report from which, if necessary, confidential information has been removed (i.e. partial access), in subsequent case-law (Orders of 13 October 2011 in Case C-560/10 P, Evropaiki Dynamiki – Proigmena Sistimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission, EU:C:2011:657, paragraph 15; and of 13 January 2012 in Case C-462/10 P, Evropaiki Dynamiki – Proigmena Sistimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Environment Agency (EEA), EU:C:2012:14, paragraphs 38-39), the Court of Justice held that it does not follow from the wording of the former first subparagraph of Article 100(2) (currently Article 170(2) of the Financial Regulation) or of the then applicable third subparagraph of Article 149(3) of Regulation 2342/2002 as amended by Regulation 1261/2005 (currently Article 170(3)(a) of the Financial Regulation), or from the Judgement in Case T-59/05, cited above, that, upon written request by an unsuccessful tenderer, the contracting authority is under an obligation to provide him with a full copy of the evaluation report. This latter approach has been further confirmed by the General Court in its Judgment of 8 July 2015 in Case T-536/11, European Dynamics v European Commission, EU:T:2015:476,paragraph 40.

2.2.1 FRAMEWORK CONTRACTS

In the specific case of framework contracts in cascade, an unsuccessful tenderer can request information about the comparative advantages of successful tenderers.

However, in the same context, a successful tenderer can request the same information only regarding the successful tenderer(s) ranked above it\(^{24}\). The names of these respective tenderers are not provided, except for the name of the successful tenderer. However, the rank is provided alongside the corresponding information about their comparative advantages.

In the case of award of a framework contract with reopening of competition, successful tenderers can request information about the characteristics and relative advantages of all successful tenderers. Indeed, a successful tenderer may dispute the award of the framework contract to another successful tenderer that would compete for specific contracts. Privileged access to information about competitors does not apply when reopening the competition between contractors for specific contracts. In this case, the unsuccessful contractors for specific contracts can only be given the name of the successful contractor.

2.2.2 INFORMATION ON NEGOTIATION AND DIALOGUES

In case of negotiations or competitive dialogue, tenderers who are not in a situation of exclusion and whose tenders are compliant with the tender specifications may request in writing information on the progress of negotiation or dialogue with tenderers (Article 170(3)(b) of the Financial Regulation).

The contracting authority should explain the rounds of negotiations/dialogue that have taken place so far. If the negotiation/dialogue takes place in stages, the number of rejected tenders/solutions (but not their names) should also be given for each stage.

2.2.3 INFORMATION TO BE WITHHELD

When answering a request for the characteristics and relative advantages of a tender or information on negotiation or dialogue, in accordance with the last subparagraph of Article 170(3) of the Financial Regulation, information should not be provided if:

- the disclosure would impede law enforcement;
- would be contrary to the public interest; or
- would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them.

This must be checked on a case-by-case basis, particularly if the comments of the evaluation committee refer to parts of the technical offer that could be considered as business secrets. If this happens, the relevant parts must be redacted.

In addition, information may have to be withheld in accordance with the Data Protection Regulation. (For instance, company names which are derived from personal names - eg ‘John

\(^{24}\) Thus, the second ranked tenderer can request information about the first ranked but not about the third, the third can request information about the first and second tender and the first tenderer cannot request any information about other tenders.
2.3 INFORMATION OF INTERESTED PARTIES IN GRANTS

According to Article 200(7) of the Financial Regulation, upon adoption of the award decision, all applicants should be informed in writing on whether their proposal has been accepted or rejected:

- Where applications are accepted, this notification must state the maximum amount of the grant to be awarded to the applicant;
- Where applications are rejected at any stage of the evaluation, the notification must state the reasons for rejection with reference to the exclusion, eligibility, selection and award criteria.

Such notifications are based on the evaluation report and the award decision and should be carefully formulated, as they can serve as a basis for a potential complaint or appeal against the decision. In principle, the information provided shall not go beyond what is already stated in the evaluation report.

III. INFORMATION IN THE CONTEXT OF THE IMPOSITION OF ADMINISTRATIVE SANCTIONS (EDES)

Information on early detection and on the imposition of administrative sanctions (exclusion and/or financial penalty) in the context of the Early Detection and Exclusion System (‘EDES’) shall not be disclosed, except where the conditions of Article 140 of the Financial Regulation are fulfilled.

IV. PUBLIC ACCESS TO DOCUMENTS (REGULATION (EC) No 1049/2001)

All natural or legal persons requesting public access to a document under Regulation (EC) No 1049/2001, irrespective of whether or not they are candidates, tenderers or grant applicants, have equal rights of access under the Regulation. Therefore, their particular 25)

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25 Judgment of 9 November 2010 in Joined Cases C-92/09 and C-93/09, Volker und Markus Schecke GbR/Hartmut Eifert v Land Hessen, EU:C:2010:662, paragraph 53: legal persons can claim the protection of Articles 7 and 8 of the Charter in relation to such identification only as far as the official title of the legal person identifies one or more natural persons.

26 According to Article 201(2) of the Financial Regulation, ‘[t]he grant agreement shall at least include the following:(a) the subject; (b) the beneficiary; (c) the duration, namely:(i) the date of its entry into force; (ii) the starting date and the duration of the action or the financial year of the funding; (d) a description of the action or, for an operating grant, of the work programme together with a description of the results expected; (e) the maximum amount of Union funding expressed in euro, the estimated budget of the action or work programme and the form of the grant; (f) the rules regarding reporting and payments and the procurement rules provided for in Article 205; (g) the acceptance by the beneficiary of the obligations referred to in Article 129; (h) provisions governing the visibility of the Union financial support, except in duly justified cases where public display is not possible or appropriate; (i) the applicable law which shall be Union law, complemented, where necessary, by national law as specified in the grant agreement. Derogation may be made in the grant agreements concluded with international organisations; (j) the competent court or arbitration tribunal to hear disputes.’

27 This provision lays down strict conditions for the publication of such sanctions. The publication of information concerning a sanctioned person or entity is strictly limited in the Financial Regulation in cases where it is necessary to reinforce the deterrent effect achieved by the exclusion and/or the financial penalty with full respect for the data protection requirements set out in the Data Protection Regulation. It follows that any references, in documents established in the context of a procedure leading to the imposition of an administrative sanction, which would enable one to identify the sanctioned person or entity should not be accessible to third parties outside of those proceedings (protection of commercial interests and possibly protection of court proceedings and/or privacy and integrity of the individual).
interests as candidates, tenderers or grant applicants cannot be taken into account under Regulation (EC) No 1049/2001.

The following already public information cannot be withheld under any exception of Regulation (EC) No 1049/2001:

- the total amount of the budget attributed for the implementation of a contract;
- specifications included in a published call for tender;
- the names of the beneficiaries of funds awarded by the Commission every year, their location; and
- the purpose of the expenditure and its amount.

Moreover, in general, correspondence from third parties can be made public, with the exception of specific commercially sensitive elements, personal data or other specifically sensitive elements, which require protection under one of the exceptions of Article 4 of Regulation (EC) No 1049/2001.

1. Potentially Applicable Exceptions to the Right of Access to Procurement and Grants-Related Documents

The usually potentially applicable exceptions to the public full/partial disclosure of procurement and grants-related documents are listed below.

Depending on the specific circumstances of each case, other exceptions could nevertheless be applicable, such as:

1.1. The protection of the public interest as regards public security, international relations or the protection of court proceedings and legal advice (depending on the context of a procurement or a grant award procedure).

1.2. The protection of the purpose of the investigations and audits shall be examined as regards an audit or an OLAF investigation relating to a procurement or a grant award procedure.

There is a general presumption of confidentiality applicable to the audit process under the exception of the third indent of Article 4(2) (protection of the purpose of investigations, inspections and audits) of Regulation (EC) No 1049/2001, with the effect that access can be refused without any specific and individual assessment of the

28 Consultations of third parties (including Member States) should enable the latter to explain their position with reference to the exceptions set out in Article 4 of Regulation (EC) No 1049/2001. If a consulted third party opposes disclosure at initial level, the DGs/services are advised not to grant access to the (parts of the) documents concerned and to refer to the justification provided under Article 4 of Regulation (EC) No 1049/2001 by the former (Where no such justification is given, the service concerned should conduct a constructive dialogue with the third party, for the latter to provide one)

documents in question, **as long as the audit procedure is ongoing**\(^{30}\), and provided that the responsible audit service has not yet validated any follow-up action\(^{31}\).

The **internal auditor’s conclusions and reports are protected** under this general presumption of confidentiality until the validation of the follow-up actions\(^{32}\). Indeed, pursuant to the Financial Regulation, ‘the reports and findings of the internal auditor, as well as the report of the Union institution concerned, shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation’\(^{33}\).

Moreover, there is a **general presumption of confidentiality of documents belonging to the administrative file of an OLAF investigation**, which is ongoing based upon the exception under the third indent of Article 4(2) (protection of the purpose of investigations, inspections and audits) of Regulation (EC) No 1049/2001, with the effect that access can be refused without any specific and individual assessment of the documents in question.\(^{34}\) This general protection of OLAF’s investigations extends to their follow-up, provided that it takes place within a reasonable period\(^{35}\).

1.3. **The protection of commercial interests of natural or legal persons, including those relating to intellectual property laid down in Article 4(2), first indent of Regulation (EC) No 1049/2001**

This exception is an expression of the Commission’s obligation of professional secrecy, which **flows from Article 339 TFEU**. This means that the Commission must take all necessary precautions to ensure that the protection of information about undertakings covered by professional secrecy and other confidential information is not undermined. **Similar clauses are included in several sectorial acts, but also, more generally, in Article 170(3) of the Financial Regulation.**

As regards commercial interests in relation to intellectual property, the mere compilation of already publicly available information does not benefit from the protection of Article 4(2), third indent of Regulation (EC) No 1049/2001\(^{36}\), as such a compilation does not suffice to show that all those data reveal the content of the applicant’s strategic know-how and are thus confidential. On the contrary, such information could only be protected in case the assembly of data reflected an inventive strategy and provided added value. **This is to be taken into account when assessing requests for access to report(s) on the implementation of a project or contract.**

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\(^{31}\) Pursuant to the Commission’s practice.


\(^{33}\) See Article 118(9) of the Financial Regulation.


\(^{35}\) Ibid, paragraph 35.

The harm that the release of certain information would cause to an entity's commercial interests is not necessarily determined by the economic value of that information.\(^{37}\)

The exception relating to commercial interests can in principle be applied to non-commercial entities, such as non-profit associations or even public entities (such as universities, public companies or even private companies fulfilling tasks in the public interest) in the framework of grant applications.

The determining factor is whether giving access to the requested information could be used to distort competition in current and future procedures, because of its commercial value or if its disclosure can prejudice the legitimate interests of economic operators who participated in the relevant procedures.

Against this background:

- **Request for quotation** drawn up by the contracting authority in performance of a framework contract, are not, in principle, considered to contain economic and technical information on the contractor or details its specific skill. The disclosure of requests for quotation is not considered as likely to undermine the interest of an institution, in that disclosure could reveal its ‘purchasing profile’ on the market.\(^{40}\)

- In addition, information, which is in principle partially accessible to the public after the completion of a particular act should be disclosed upon its completion, for example:
  
  - the *evaluation report* is in principle partially accessible to the public after the end of the procurement or grants award procedure, i.e. after the signature of the contract or grant agreement. The scores, ranking, application of the ranking formula and the global price should be accessible; and
  
  - the *names of the successful tenderers* are disclosed (but not those of the unsuccessful tenders).

There is an established general presumption of non-disclosure of a bid submitted by a tenderer in a public procurement procedure to another legal or natural person.\(^{41}\) The general presumption of non-disclosure of a bid applies, per analogy, also to submitted grant applications.

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\(^{39}\) *Falcon Technologies International LLC v European Commission*, cited above, paragraphs 48-49.

\(^{40}\) In fact, even if disclosure of the relationship between the tasks to be performed and the number of working days necessary to complete them could enable the tenderers, in future public procurement procedures, to unveil the institution’s costing technique, the fact that tenderers could know the prices quoted in the past for a corresponding service seems more likely to lead to a situation of genuine competition than to a situation where competition would be distorted, see Judgment of the General Court of 14 December 2017 in Case T-136/15, *Evropaïki Dynamiki — Proiçmena Systiñata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Parliament*, EU:T:2017:915, paragraph 71.

Documents, other than the bid of a tenderer or a grant application can also contain commercially sensitive information which require protection against public disclosure, such as:

- information relating to methodologies, know-how, specific pricing, breakdown of budgets or timetables, involvement of experts or partners, information on detailed operational aspects, timetables, business strategies, detailed description of the proposed actions in case of grant applications or any other information carrying a commercial value.

Disclosure, to the public, of such information relating to the execution of a service or of an action would undermine the protection of the relevant natural or legal person’s expertise, know-how, strategy and creativity and thus their commercial strength, as it would be used by competitors in future similar procedures, to the detriment of the natural or legal persons concerned.

- Other sensitive commercial data which normally deserve protection are: bank accounts, VAT numbers of tenderers and grant applicants, as these are not public and their public disclosure would undermine the integrity of financial operations of the entities they belong.

Names of legal persons who participated in a call for tenders or a call for proposals: Although in an open procedure, tenderers or grant applicants can attend the opening of the offers on a privileged basis, this event is not open to the general public. Therefore, public disclosure of the names of legal persons that participated in a call for tenders or a call for proposals could undermine their commercial interests. In particular, public disclosure of the names of the rejected tenderers could undermine the reputation of the company or organisation concerned. This has to follow from the specific contents of the documents concerned, in particular negative evaluations included in the documents.

Information falling with the ambit of commercial secrecy, which is five or more years old, should in principle be treated as historic. Therefore it should not be protected further, unless, by way of exception it is proven that such information still constitutes an essential element of the commercial position of the undertaking to which it relates.\(^{42}\)

In particular, the institution may adduce specific justification after consultation with the undertaking concerned in accordance with Article 4(4) of Regulation (EC) No 1049/2001, to demonstrate that notwithstanding the passing of time, the information in question still requires protection under the first indent of Article 4(2) of the Regulation\(^{43}\).

- For this purpose, the Commission decision will have to illustrate in a concrete manner that other tenderers/ grant applicants could use the information in order to free-ride on the expertise of the author(s) of the documents; and

- Due consideration should also be given to the continued relevance of the information requested for the current or future strategy of the author(s) of the documents, notwithstanding the passing of time, in particular where the latter regularly participates in EU calls for proposals/tenders and its methodology has not deeply evolved\(^{44}\).

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\(^{43}\) Ibid, paragraph 82.

Against this background, in practice, unless there is absolutely no doubt that the information is clearly outdated/no longer sensitive and can be disclosed, the institution MUST, following a request for access to documents pertaining to contractual documents and containing sensitive commercial information older than five years old:

- Assess whether the application of the exception provided under the first indent of Article 4(2) of Regulation (EC) No 1049/2001 continues to be justified, having regard to the passing of time or the termination of the contract at stake. (This is the case where the information still constitutes an essential element of the commercial position of the undertaking to which it relates.)
- Consult the third party originator of the documents concerned in accordance with Article 4(4) of Regulation (EC) No 1049/2001; and
- Provide specific justification if the commercial interests still require:
  - a) the application of the presumption regarding the bid/proposal, notwithstanding the arguments put forward by the applicant to rebut it; or
  - b) the protection of the contents of the individually assessed requested documents.

As regards information on early detection and information on the imposition of administrative sanctions (exclusion and/or financial penalty) in the context of the EDES, public disclosure of this information, except where the conditions of Article 140 of the Financial Regulation are fulfilled, would clearly undermine the commercial interests of the concerned parties, as it would negatively impact their reputation and credibility in the market.\(^\text{45}\) This protection extends beyond five years.

1.4. The protection of ‘privacy and the integrity of the individual’

Article 4(1)(b) of Regulation (EC) No 1049/2001 must be invoked where public disclosure of the procurement and grant-related documents would involve the release of personal data contained therein, thereby undermining the privacy and integrity of natural persons.

This is the case where the document(s) requested contain(s) names and/or other personal data of grant applicants, candidates, tenderers, members of the opening or evaluation committees, experts or other individuals (e.g. CVs, addresses, telephone numbers, email addresses, signatures etc.).

- In such cases, all above mentioned personal data concerned must be redacted on the basis of the exception of Article 4(1)(b), unless the two conditions set by the case law (substantiation of a need and no prejudice to the individuals’ legitimate rights in the meaning of Article 9 of Regulation 2018/1725) are fulfilled. In practice, partial access should be granted to the rest of the document(s), provided that no other exception applies.
- The names of firms should only be redacted on the basis of Article 4(1)(b) only insofar as the official title of the firm identifies one or more natural persons.\(^\text{46}\) Observations, such as comments made by external experts, which can be attributed to identifiable persons are


\(^{46}\) Judgment of 9 November 2010 in Case C-92/09, Volker und Markus Schecke GbR and in Case C-93/09, Hartmut Eifert v Land Hessen, paragraph 53.
personal data\(^{47}\), The same is applicable to all kinds of information, not only objective but also subjective, in the form of opinions and assessments, provided that it ‘relates’ to the data subject. As regards the latter condition, it is satisfied where the information, by reason of its content, purpose or effect, is linked to a particular person\(^{48}\).

1.5. The protection of the ‘Decision-making process’ (ongoing or closed)

- **Article 4(3), first subparagraph**, of Regulation (EC) No 1049/2001 may be invoked for **ongoing** public procurement or grant award procedures if the requested public disclosure would seriously undermine the ongoing decision-making process because of likely undue external pressure:

  ➢ This will normally be the case for documents reflecting **individual opinions of the evaluation committee, of individual external experts, of external assessors in case of grants, or of the evaluation committee as such before the contract is signed**\(^{49}\).

In principle, individual comments or evaluation grids filled out by the individual members of an evaluation committee are not attached to the corresponding evaluation report because the evaluation is an opinion of the committee as such, and not a sum of the opinions of its separate members. For the same reasons and in order to protect the independence of the decision-making process, access to such individual comments or evaluation sheets must be refused following a request for access. Concerning the individual assessment sheets drawn up by the members of the evaluation committee, the General Court has confirmed that the public interest in transparency cannot be considered superior to the principle of independence of the members of the evaluation committee and cannot, therefore, justify disclosure of the evaluation grids\(^{50}\).

This applies independently of whether the individual assessment sheets are registered and stored either with the evaluation report or separately (e.g. under certain grant programmes or in some IT systems). Similarly, individual evaluations which are stored in an IT Tool, for example in the Horizon 2020 system, are, in principle, not accessible (protection of the decision-making process and if applicable, protection of privacy and integrity of the individual).

- **Article 4(3), second subparagraph**, may be relied upon for **closed** procedures, provided that the information protected reflects opinions for internal use as part of deliberations and preliminary consultations within the institution concerned:

  ➢ The individual opinions of evaluation committee members may continue to be protected under this provision.


\(^{48}\) Judgment of 20 December 2017 in Case C-434/16, **Peter Nowak v Data Protection Commissioner**, request for a preliminary ruling from the Supreme Court, EU:C:2017:994, paragraphs 34-35.

\(^{49}\) Such opinions can also contain personal data according to Regulation (EU) 2018/1725 if a natural person is or could be identified through those data.

2. **OVERRING PUBLIC INTEREST**

The exceptions for the protection of ‘commercial interests’ ‘decision-making process’ provided for respectively under Article 4(2) and (3) of Regulation (EC) No 1049/2001 are not absolute, unlike the exception provided under Article 4(1)(b). They apply only ‘unless there is an overriding public interest in disclosure’. Therefore, it is necessary to check, for each document involved, whether:

- disclosure would be in the public interest or, rather, in the interest of a private party;
- where a possible public interest can be identified, that interest is sufficiently important to override the interest which the exception in question is designed to protect (e.g. the protection of the commercial interests of the natural and legal persons concerned or the decision-making process).  

The following interests do not, in principle, constitute an overriding public interest:

- The interest of unsuccessful tenderers or grant applicants to obtain information enabling them to understand why their tender or grant application was not selected does not constitute an overriding public interest as it is clearly private;
- A mere general interest of the public in obtaining the document concerned or in assessing whether the procedure was conducted fairly; nor
- An applicant's personal interest in obtaining access to the document concerned (for instance, to finalise a master’s thesis, initiate court proceedings or verify whether his/her tender or grant application was rightfully rejected).

Thus, in practice, it will be difficult to substantiate an overriding public interest which is sufficiently important to override the interest(s) protected, as the Financial Regulation provides the necessary legal and procedural guarantees (including controls) to ensure that the procurement and grant award procedures take place under the fairest conditions possible.

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52 The particular interest of an applicant in obtaining access to documents cannot be taken into account by the institution called upon to rule on the question whether the disclosure to the public of those documents, see Judgments of 1 February 2007 in Case C-266/05, **Jose Maria Sison v Council of the European Union**, EU:C:2007:75, paragraph 47 and of 26 May 2016 in Case T-110/15, **International Management Group v European Commission**, EU:T:2016:322, paragraphs 56-57.

53 Judgment of 21 September 2010 in Joined Cases C-514/07 P, C-528/07 P and C-532/07 P, Case C-514/07, **Kingdom of Sweden v Association de la presse internationale ASBL (API) and European Commission (C-514/07 P), Association de la presse internationale ASBL (API) v European Commission (C-528/07 P) and European Commission v Association de la presse internationale ASBL (API) (C-532/07 P)**, EU:C:2010:541, paragraphs 156-159.

3. ANNEX 1

4. ACCESS TO DOCUMENTS (REGULATION (EC) NO 1049/2001) RELATED TO PROCUREMENT PROCEDURES

The listed documents do not necessarily appear in all procedures.

OP = Open Procedure

RP = Restricted Procedure (1\textsuperscript{st} step: candidates send a request to participate; 2\textsuperscript{nd} step: invited candidates submit tenders)

CPN = Competitive Procedure with Negotiation (1\textsuperscript{st} step: candidates send a request to participate; 2\textsuperscript{nd} step: invited candidates submit tenders)

NP = Negotiated Procedure (low or middle value or without publication of contract notice under point 11 of Annex 1 to the Financial Regulation)

The proposed practices listed below can help the services in their analysis. It is imperative to carry out a concrete assessment of the document(s) on a case-by-case basis by reference to the guidance note. Reading the table is not sufficient in order to assess if a document should or should not be disclosed.

<table>
<thead>
<tr>
<th>Document requested</th>
<th>Stage of procedure</th>
<th>Usual administrative practices</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Launch of the procurement procedure</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pre-information notice</td>
<td>From the moment of publication</td>
<td>Accessible (document published)</td>
</tr>
<tr>
<td>Justification for using a negotiate procedure</td>
<td>After the procedure is launched (the decision to use a negotiated procedure is already taken)</td>
<td>Accessible</td>
</tr>
<tr>
<td>Contract notice</td>
<td>From the moment of publication</td>
<td>Accessible (document published)</td>
</tr>
<tr>
<td><strong>Submission and opening of requests to participate</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>List of candidates who submitted a request to participate in a restricted procedure or a competitive procedure with negotiation or a negotiated procedure</td>
<td>During procedure/after submission of requests to participate (1\textsuperscript{st} step for a restricted procedure or a competitive procedure with negotiation or a negotiated procedure)</td>
<td>Not accessible (decision-making process exception), as disclosure, at this stage, may encourage collusion of candidates</td>
</tr>
</tbody>
</table>

NB: under the ‘privacy and integrity’ exception, the applicant for access to documents must justify the necessity of transmission of personal data in accordance with Regulation (EU) No 2018/1725
<table>
<thead>
<tr>
<th>Requests to participate</th>
<th>During procedure/after contract signature or cancellation of the procedure</th>
<th>Not accessible in principle (privacy and/or commercial interests exceptions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written record of the opening of requests to participate (first step of a restricted procedure or a competitive procedure with negotiation or a negotiated procedure)</td>
<td>After deadline for receipt of tenders has elapsed (end of second step), but before the signature of the contract/cancellation of the procedure</td>
<td>Not accessible (decision-making process and commercial interests exception), as the opening of the requests is not open to the public</td>
</tr>
<tr>
<td>After the signature of the contract/cancellation of the procedure</td>
<td>Partially accessible except for personal data of natural persons, as well as the names of firms identifying one or more natural persons (privacy exception) or names of unsuccessful tenderers, including names of unsuccessful firms (commercial interests exception)</td>
<td></td>
</tr>
<tr>
<td>Written record of the evaluation of requests to participate (first step of a restricted procedure or a competitive procedure with negotiation or a negotiated procedure)</td>
<td>After contract signature or cancellation of the procedure</td>
<td>Partially accessible: except for personal data of natural persons, for example of the members of the evaluation committee and individual opinions of the evaluators (protection of privacy and of the decision-making process), as well as negative comments of the evaluators or other parts of the document whose disclosure would harm candidates’ commercial interests (protection of commercial interests)</td>
</tr>
<tr>
<td>Procurement documents (notice, invitation to tender, tender specifications and draft contract)</td>
<td>As soon as the procedure is launched</td>
<td>Open procedure, restricted procedure, competitive procedure with negotiation or negotiated procedure: Procurement documents are partially accessible after redaction of personal data (protection of privacy) except for the parts thereof that are confidential, in particular for tender specifications in a restricted procedure or a negotiated procedure, if the choice of the procedure reflects a specific concern and a need for confidentiality (for example for security reasons, as in case of a plan of a Commission building in the context of a call for tenders for security services). Confidential parts of the procurement documents are not accessible according to point 25.1 of Annex 1 to the Financial Regulation.</td>
</tr>
<tr>
<td>Additional information, questions &amp; answers</td>
<td>As soon as the information is published</td>
<td>Open procedure, restricted procedure, competitive procedure with negotiation or negotiated procedure: partially accessible (documents published after redaction of personal data)</td>
</tr>
<tr>
<td></td>
<td>As soon as the information has been made available to candidates or tenderers</td>
<td>All procurement documents are partially accessible: except for the confidential parts according to point 25.2 of Annex 1 to the Financial Regulation (see above)</td>
</tr>
<tr>
<td>Submission and opening of tenders</td>
<td></td>
<td>Not accessible (protection of commercial interests) based on a general presumption of non-accessibility The application of the general presumption requires an additional specific justification as to the continued relevance of five year-old or older commercially sensitive information.</td>
</tr>
<tr>
<td>Received tenders</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Decision appointing the committees for the opening and evaluation of tenders</strong></td>
<td><strong>After contract signature or cancellation of the procedure</strong></td>
<td><strong>Partially accessible: except for personal data of natural persons, for example of the members of the committees (protection of privacy and of the decision-making process)</strong></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
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</tr>
<tr>
<td><strong>Written record of the opening of tenders (open procedure + 2nd step restricted procedure, competitive procedure with negotiation or negotiated procedure)</strong></td>
<td><strong>As soon as the written record is drawn-up</strong></td>
<td><strong>Partially accessible: except for personal data of natural persons, for example of the members of the opening committee and representatives of the tenderers, and names of unsuccessful tenderers, including names of unsuccessful firms (protection of privacy, of the decision-making process, and of commercial interests)</strong></td>
</tr>
</tbody>
</table>

### Evaluation of tenders

<table>
<thead>
<tr>
<th><strong>Declarations on the absence of conflicts of interest and confidentiality signed by the evaluators</strong></th>
<th><strong>As soon as they are drawn up</strong></th>
<th><strong>Partially accessible: except for personal data of natural persons, for example of the members of the opening committee (protection of privacy and of the decision-making process)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Clarifications on supporting documents or correction of clerical errors requested from tenderers during evaluation and their replies</strong></td>
<td><strong>After contract signature or cancellation of the procedure</strong></td>
<td><strong>Partially accessible: except for information which possibly needs to be protected under the commercial interests exception and personal data of natural persons (protection of commercial interests and privacy)</strong></td>
</tr>
</tbody>
</table>
| Evaluation report | After contract signature or cancellation of the procedure | Partially accessible: except for personal data of natural persons, for example of the members of the evaluation committee (protection of privacy and of the decision-making process) and parts of the documents whose disclosure would harm tenderers’ commercial interests, for example negative assessments of their offer (protection of commercial interests)

The scores, ranking, application of the ranking formula and the global price of the contract should be accessible.

The bid of the winner is covered by a general presumption of non-disclosure even after the signature of the contract.

Please note that in the restricted procedures there are two evaluation reports relating to two successive stages of the procedure. Privileged access rights provided for in Article 170(3) of the Financial Regulation is limited to tenderers. Therefore, candidates that are not selected in stage 1 do not have the privileged access right to ask for information related to stage 2.

**Nota bene:**
Clarification in relation to the stage before contract signature:
During the standstill period (starting by the communication of the result of the selection to participants and ending by the signature of the contract) candidates often request the evaluation report [NB the bid of the winner is covered by a general presumption of non-disclosure, even after the signature of the contract]. Until the contract is signed, the exception of the ongoing decision-making process applies for such requests for access to documents under Regulation (EC) No 1049/2001. During the standstill period, such requests should be dealt with under Article 170(3) of the Financial Regulation for those interested parties who have a right to request privileged access. |
<table>
<thead>
<tr>
<th>Individual evaluation sheets</th>
<th>Not accessible in principle: personal notes or evaluation sheets (scores and comments) drafted or filled in by individual members of the evaluation committee (protection of privacy and of the decision-making process)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expertise report from external expert to contribute to evaluation report</td>
<td>Partially accessible: except for personal data of natural persons, for example of the members of the evaluation committee or external experts (protection of privacy and of the decision-making process) and parts of the document whose disclosure would harm tenderers’ commercial interests including negative comments regarding their offer and specific prices (commercial interests exception)</td>
</tr>
</tbody>
</table>

**Award and signature of contract or cancellation of procedure**

<table>
<thead>
<tr>
<th>Award decision</th>
<th>After adoption of the decision</th>
<th>Accessible</th>
</tr>
</thead>
</table>
| Notification of contract award to the successful tenderer | After signature of the contract | Partially accessible: except for personal data of natural persons, for example of the members of the evaluation committee (protection of privacy and of the decision-making process) and parts of the document whose disclosure would harm tenderers’ commercial interests including negative comments regarding their offer and specific prices (protection of commercial interests)  
In case confidential information pertaining to the authority that issued a call for tenders is exceptionally included in the notification of contract award, this information should be redacted. |
<table>
<thead>
<tr>
<th>Section</th>
<th>Time Frame</th>
<th>Accessibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract and its annexes (tender specifications, tender…)</td>
<td>After signature of the contract</td>
<td>Partially accessible: except for the tender submitted by the winner which is annexed to the contract (protection of commercial interests) The tender specifications are normally public. Exceptionally, if confidential information pertaining to the authority that issues a call for tenders is given only to tenderers that meet certain criteria in restricted procedure or negotiated procedure, this information is not publicly disclosed (example: plan of a Commission building in the context of a call for tenders for security services).</td>
</tr>
<tr>
<td>Notifications of award decision to unsuccessful tenderers</td>
<td>After contract signature or cancellation of the procedure</td>
<td>Partially accessible: except for personal data of natural persons, for example of the members of the evaluation committee (privacy exception or decision-making process exception) or the names of unsuccessful tenderers, as well as parts of the documents whose disclosure would undermine the commercial interests of third parties and/or decision-making process</td>
</tr>
<tr>
<td>Decision to cancel the procedure</td>
<td>As soon as the decision is taken</td>
<td>Accessible</td>
</tr>
<tr>
<td>Notification to tenderers of cancellation of procedure</td>
<td>As soon as the notification letters are sent out</td>
<td>Partially accessible: except for personal data of natural persons, such as the members of the evaluation committee or of the tenderers as well as parts whose disclosure would undermine the commercial interests of third parties and/or decision-making process</td>
</tr>
<tr>
<td>Award or cancellation notice</td>
<td>From publication</td>
<td>Accessible (document published)</td>
</tr>
</tbody>
</table>

**Contract management**

<table>
<thead>
<tr>
<th>Requests for services/request for quotation (only for framework contracts with re-opening of competition)</th>
<th>Before signature of the specific contract</th>
<th>Not accessible (protection of the decision-making process)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>After signature of the specific contract</td>
<td>Partially accessible: except for personal data (protection of privacy) and for parts of the documents where disclosure would harm tenderers’ commercial interests, for example unit prices (protection of commercial interests)</td>
</tr>
<tr>
<td>Evaluation report (only for framework contracts with re-opening of competition)</td>
<td>After the signature of the specific contract and before the expiry of the framework contract</td>
<td>Partially accessible: except for personal data (privacy exception) and for parts of the documents where disclosure would harm tenderers’ commercial interests, for example unit prices (protection of commercial interests). <strong>Exception:</strong> for specific contracts awarded following re-opening of competition, the characteristics and relative advantages as well as the price of the successful contractor should be redacted. There is not even privileged access to this information under Article 113(3)(a) of the Financial Regulation to preserve a fair competition between contractors.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>After the expiry of the framework contract</td>
<td>Partially accessible: except for personal data (protection of privacy) and for parts of the documents where disclosure would harm tenderers’ commercial interests, for example unit prices (protection of commercial interests).</td>
</tr>
<tr>
<td>Specific tenders (only for framework contracts with re-opening of competition)</td>
<td>Before signature of the specific contract</td>
<td>Not accessible (protection of the decision-making process and protection of commercial interests), as there is a general presumption of non-disclosure for a bid</td>
</tr>
<tr>
<td></td>
<td>After signature of the specific contract</td>
<td>Not accessible (protection of commercial interests), as there is a general presumption of non-disclosure for a bid (subject to an additional specific justification as to the continued relevance of the five year old or older commercially sensitive information contained therein)</td>
</tr>
</tbody>
</table>
| Specific contracts/order forms | Before expiry of the framework contract | Partially accessible: except for personal data (privacy exception) and for parts of the documents where disclosure would harm tenderers’ commercial interests, for example unit prices (protection of commercial interests)

**Exception:** for specific contracts awarded following re-opening of competition, the **amount** should be redacted. There is not even privileged access to this information under the Financial Regulation to preserve a fair competition between contractors |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>After expiry of the framework contract</td>
<td>Partially accessible: except for personal data (privacy exception) and for parts of the documents where disclosure would harm tenderers’ commercial interests, for example unit prices (protection of commercial interests)</td>
<td></td>
</tr>
<tr>
<td>Requests for payment/invoices/statement of reimbursable expenses</td>
<td>Before payment by the contracting authority</td>
<td>If the institution did not yet accept the claim, the decision-making process exception has to be considered, in case disclosure would seriously undermine the decision-making process</td>
</tr>
<tr>
<td>After payment by the contracting authority</td>
<td>Partially accessible: except for personal data and for parts of the documents where disclosure would harm tenderers’ commercial interests, for example VAT numbers or bank account numbers, breakdown of claimed costs (with the exception of the global amount claimed)(protection of privacy and commercial interests)</td>
<td></td>
</tr>
<tr>
<td>Progress reports/implementation reports</td>
<td>Partially accessible: except for personal data and for parts of the documents where disclosure would harm tenderers’ commercial interests or the decision-making process (protection of privacy, commercial interests or the decision-making process)</td>
<td></td>
</tr>
</tbody>
</table>
| Deliverables/results under the contract | Full access to publishable deliverables and results  
Partial access to non-publishable deliverables/results, if necessary after consultation of the third party, except for parts whose disclosure would undermine the protection of public interests mentioned in Regulation (EC) No 1049/2001, privacy, commercial interests, protection of the decision-making process or any other interest mentioned in Regulation (EC) No 1049/2001.  
Please note that a consultation of the contractor may be needed on the basis of the contract (IPRs provisions) |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank guarantee for pre-financing/performance guarantee</td>
<td>Not accessible in principle (protection of commercial interests)</td>
</tr>
</tbody>
</table>
| For supply contracts: Certificates of origin and declarations attesting the origin of the supplies | After signature of the contract  
Partially accessible, subject to redactions of personal data |
| Checks and audits |  |
| Draft audit report | As soon as the draft audit report is sent to the auditee (contradictory audit procedure)  
Not accessible in principle: protection of the purpose of inspections, investigations and audits and decision-making process, protection of commercial interests and privacy  
After the completion of the audit and/or follow-up actions  
Partially accessible: except for the parts whose disclosure would undermine the purpose of the audit, the commercial interests of third parties and/or the protection of privacy |
| Final audit report | As soon as the final audit report is sent to the auditee until possibly to the follow-up of the audit findings to the extent that that follow up takes place within a reasonable period of time  
Not accessible in principle: protection of the purpose of inspections, investigations and audits and decision-making process, protection of commercial interests and privacy. |
### Annex 2

#### 6. ACCESS TO DOCUMENTS (Regulation (EC) No 1049/2001) FOR GRANTS

The proposed practices listed below can help the services in their analysis. It is imperative to carry out a concrete assessment of the document(s) on a case-by-case basis by reference to the guidance note. Reading the table is not sufficient in order to assess if a document should or

<table>
<thead>
<tr>
<th>Document Type</th>
<th>Accessibility Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>After finalisation of follow-up actions</td>
<td>Partially accessible: except for the parts whose disclosure would undermine the purpose of the audit, the commercial interest of third parties and/or the protection of privacy</td>
</tr>
<tr>
<td>Other audit-related documents (sample, audit notification letter, exchanges with the auditee during the contradictory procedure etc)</td>
<td>Not accessible in principle: protection of the purpose of inspections, investigations and audits and decision-making process, protection of commercial interests and privacy</td>
</tr>
<tr>
<td>Audit manuals, external audit synthesis reports, presentations prepared by the audit service etc</td>
<td>Partially accessible: except for parts revealing information on the audit strategy whose disclosure would seriously reduce the effectiveness of the audit capacity of the Commission or enable third parties to pre-empt the audit by making adaptations to their accounting and supporting documentation or parts which would undermine privacy or commercial interests of third parties, including external audit firms (protection of the purpose of audits, privacy and/or commercial interests)</td>
</tr>
<tr>
<td><strong>Contractual measures and sanctions</strong></td>
<td></td>
</tr>
<tr>
<td>Suspension/ termination notification letters (including suspension of payments by the Commission)</td>
<td>Not accessible in principle (protection of commercial interests and privacy)</td>
</tr>
<tr>
<td>Recovery orders</td>
<td>Not accessible in principle (protection of commercial interests and privacy)</td>
</tr>
<tr>
<td>Enforced recovery - Commission decision based on Article 299 TFEU</td>
<td>Not accessible in principle (protection of commercial interests and privacy)</td>
</tr>
</tbody>
</table>

5. Annex 2
should not be disclosed. Exceptions related to the protection of the public interest as regards public security, defence and military matters, international relations or the financial, monetary or economic policy of the Union or a Member State may also be assessed if relevant to the funding programme concerned.

**NB:** under the ‘privacy and integrity’ exception, the applicant for access to documents must justify the necessity of transmission of personal data in accordance with Regulation (EU) 2018/1725.

<table>
<thead>
<tr>
<th>Document requested</th>
<th>Timing</th>
<th>Usual administrative practices</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Publication of call for proposals</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Call for proposals and accompanying documents</td>
<td>From the moment of publication or once it is made available to applicants</td>
<td>Accessible</td>
</tr>
<tr>
<td>Additional information during the procedure</td>
<td>As soon as the additional information is published</td>
<td>Accessible (information published)</td>
</tr>
<tr>
<td><strong>Submission of grant applications</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grant applications</td>
<td></td>
<td><strong>Not accessible based on a general presumption of non-disclosure</strong> (protection of commercial interests and privacy), even after finalisation of the grant award procedure. The application of the general presumption requires an additional specific justification as to the continued relevance of five year-old or older commercially sensitive information.</td>
</tr>
<tr>
<td><strong>Evaluation of grant applications</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Declarations on the absence of conflict of interest signed by the members of the evaluation committee</td>
<td>As soon as they are drawn-up</td>
<td>Partially accessible: except for personal data (protection of privacy) or parts seriously undermining the decision-making process</td>
</tr>
<tr>
<td>Document on evaluation methodology, where applicable</td>
<td>If published with the call for proposals</td>
<td>Accessible immediately</td>
</tr>
<tr>
<td></td>
<td>If not published with the call for proposals</td>
<td>Accessible after taking the award/rejection decision on concerned applications</td>
</tr>
<tr>
<td>Clarifications requested from applicants during evaluation and their replies</td>
<td>After signature of grant agreement or after cancellation of the procedure</td>
<td>Partially accessible: except for information covered by the commercial interests and personal data (protection of commercial interests and privacy)</td>
</tr>
<tr>
<td>Written record of evaluation of grant applications</td>
<td>After signature of the evaluation committee minutes, but before signature of the grant agreement</td>
<td>Not accessible: (protection of privacy, commercial interests and/or decision-making process)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>After signature of grant agreement</td>
<td>Partially accessible: except for personal data of members of the evaluation committee or other natural persons (protection of privacy), and parts whose disclosure would harm grant applicants’ commercial interests</td>
</tr>
<tr>
<td>Individual evaluation sheets</td>
<td></td>
<td>Not accessible in principle: (protection of privacy, commercial interests and/or decision-making process) <strong>Individual evaluations which are stored in an IT Tool,</strong> for example in the Horizon 2020 system, are, in principle, not accessible (protection of privacy and of the decision-making process)</td>
</tr>
</tbody>
</table>

**Award of grants and signature of grant agreements**

<p>| Award/rejection decisions | When the decision is adopted | Award and rejection decisions are partially accessible (protection of commercial interests and privacy) The names of unsuccessful applicants (or candidates to expert groups in the context of comitology) can be protected (protection of commercial interests) |
| Notification of the award/rejection decision to the applicants | As soon as notification letters are sent out | Partially accessible: except for personal data of external experts, members of the evaluation committee or other natural persons (protection of privacy), and parts whose disclosure would harm grant applicants’ commercial interests |
| Grant agreement and its annexes | When the agreement is signed | Partially accessible: except for the grant application which is covered by a general presumption of non-disclosure (subject to an additional specific justification as to the continued relevance of the five year-old or older commercially sensitive information contained therein), action description, action estimated budget and personal data (protection of commercial interests exception and privacy) |</p>
<table>
<thead>
<tr>
<th>Grant Agreements management</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial guarantees (bank guarantee, third party guarantee)</td>
</tr>
<tr>
<td>Requests for modifications to the grant agreement and its annexes (as well as related exchanges)</td>
</tr>
<tr>
<td>Amendment to the grant agreement and its annexes</td>
</tr>
<tr>
<td>Technical reports forming (or not) part of a payment request</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Financial reports</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Notification letters on amounts paid (pre-financing, interim/final payments)</td>
</tr>
</tbody>
</table>

**Checks and audits**
<table>
<thead>
<tr>
<th>Documents related to technical or financial checks undertaken during the action implementation</th>
<th>Not accessible: protection of the purpose of inspections, investigations and audits and decision-making process, protection of commercial interests and privacy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Draft audit report</td>
<td>As soon as the draft audit report is sent to the auditee (contradictory audit procedure)</td>
</tr>
<tr>
<td></td>
<td>After the completion of the audit and/or follow-up actions</td>
</tr>
<tr>
<td>Final audit report</td>
<td>As soon as the final audit report is sent to the auditee until possibly to the follow-up of the audit findings to the extent that that follow up takes place within a reasonable period of time</td>
</tr>
<tr>
<td></td>
<td>After finalisation of follow-up actions</td>
</tr>
<tr>
<td>Other audit related documents (sample, audit notification letter, exchanges with the auditee during the contradictory procedure etc)</td>
<td>Not accessible in principle: protection of the purpose of inspections, investigations and audits and decision-making process, protection of commercial interests and privacy</td>
</tr>
<tr>
<td>Audit manuals, external audit synthesis reports, presentations prepared by the audit service etc</td>
<td>Partially accessible: except for parts revealing information on the audit strategy whose disclosure would seriously reduce the effectiveness of the audit capacity of the Commission or enable third parties to pre-empt the audit by making adaptations to their accounting and supporting documentation or parts which would undermine privacy or commercial interests of third parties, including external audit firms (protection of the purpose of audits, privacy and commercial interests)</td>
</tr>
<tr>
<td>Suspension/ termination notification letters (including suspension of payments by the Commission)</td>
<td>Not accessible in principle (protection of commercial interests and privacy)</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>Recovery orders</td>
<td>After the recovery order was sent out to the beneficiary(ies)</td>
</tr>
<tr>
<td>Enforced recovery - Commission decision based on Article 299 TFEU</td>
<td>After adoption of the Commission decision</td>
</tr>
</tbody>
</table>