



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels, 19th December 2019
CONNECT/R4

Mr. Jouko Huismans
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Netherlands

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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents – Ref GestDem No 2019/6579

Dear Mr Huismans,

We refer to your application for access to documents submitted under Article 2(1) of Regulation 1049/2001 on public access to documents (hereinafter, ‘Regulation 1049/2001’) received on 09/11/2019 and registered on 12/11/2019 under the above mentioned reference number. We also refer to our email dated 03/12/2019 (our reference, [Ares\(2019\)7435676](#)) whereby we informed you that the time-limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATION AND DOCUMENTS IDENTIFIED

By means of your application, you requested access to ‘*[t]he Grant Agreement of the Marconi Project No 761802.*’

We have identified the following document: Grant Agreement No 761802 – Marconi (our reference, [Ares\(2017\)3570008](#)).

2. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the document requested under the provisions of Regulation 1049/2001, we conclude that partial access can be granted to the document. The access is limited since two exceptions to the right of access laid down in Article 4 of this Regulation apply.

a. Protection of personal data

Parts of the document contain personal data, in particular names, functions and handwritten signatures of European Commission staff and third parties.

Pursuant to Article 4(1)(b) of Regulation 1049/2001, access to a document has to be refused if its 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 applicable legislation in this field is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC¹ (hereinafter, ‘Regulation 2018/1725’).

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data “*means any information relating to an identified or identifiable natural person [...]*”. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.² Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff numbers of an institution are to be considered personal data³.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if “*[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests*”’. Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission

¹ Official Journal L 205 of 21.11.2018, p. 39.

² Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

³ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

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

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned. The above-mentioned parts of this document have therefore been blanked out.

b. Protection of commercial interests

Article 4(2), first indent of Regulation 1049/2001 provides that the *'institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property...unless there is an overriding public interest in disclosure.'*

Parts of this document contain commercially sensitive business information of the beneficiaries. In particular these parts relate to information given by the beneficiaries in the grant application concerning the description of the action. This includes information on the know-how and experience of the grant applicants. Parts of this information also concern the estimated budget of the action. The disclosure of this information would not only undermine the protection of commercial interests of the legal persons, including intellectual property, but would also give other entities (competitors) a competitive advantage in future calls for proposals.

Based on the foregoing, there is a real and non-hypothetical risk that public access to these parts of these documents would seriously undermine the commercial interests of the beneficiaries of this grant. We are therefore disclosing a version of the document with these parts redacted.

Please note that parts of this document originate from the project's consortium. The document is disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on it.

Other parts of these documents originate from the Commission. You may reuse these parts free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of these parts. Please note that the Commission does not assume liability stemming from the reuse.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined

whether there could be an overriding public interest in the disclosure of the parts of the document which are being withheld and the documents for which disclosure is being refused entirely, but we have not been able to identify such an interest.

4. CONFIRMATORY APPLICATION

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

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-4
BERL 5/288
1049 Bruxelles

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

Yours sincerely,

(e-Signed)
Roberto Viola

Enclosures: 1