DOC 12

EUROPEAN COMMISSION

Brussels, 19.2.2019
C(2019) 1526 final

[redacted]
Latham & Watkins LLP
Boulevard du Régent, 43-44
1000 Brussels
Belgium

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001[1]

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2018/4940

Dear [redacted]

I refer to your letter of 3 December 2018, registered on 4 December 2018, in which you submitted a confirmatory application, on behalf of your client, in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents[2] (hereafter 'Regulation (EC) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 21 September 2018, addressed to the Directorate-General for Communications Networks, Content and Technology, you requested:

'[i]n the context of call for proposals H2020-INFRAEDI-2018-2020(H2020-INFRAEDI-2018-1), activity INFRAEDI-02-2018, Research and Innovation action, all the proposals that were submitted by the applicants, in particular the proposals submitted by MaX and EoCoE, as well as the Evaluation Summary Reports that were prepared by the evaluators and sent to the applicants by the DG CONNECT, in particular the Evaluation Summary Reports sent to MaX and EoCoE'.

1 Official Journal L 345 of 29.12.2001, p. 94.
2 Official Journal L 145 of 31.5.2001, p. 43.

In its initial reply, the Directorate-General for Communications Networks, Content and Technology considered that your request covered all eligible proposals to the relevant call for proposals and identified 46 documents which matched this criteria. Please note, however, that eight of these documents concern other topics of the call, which do not fall within the scope of your request[3]. Please also note that the proposal submitted [redacted] and the corresponding evaluation summary report are already in possession of your client.

Consequently, the European Commission has identified the following 36 documents as falling within the scope of your request:

- 18 grant proposals submitted by the applicants under the call for proposals INFRAEDI-02-2018 'RIA Research and Innovation action Topic HPC PPP – Centres of Excellence on HPC Applications', registered under the following Ares references:
  - Proposal for grant agreement, EXCELLERAT, reference Ares(2018)1792253 (hereafter 'document 1');
  - Proposal for grant agreement, CompBioMed2, reference Ares(2018)1792399 (hereafter 'document 2');
  - Proposal for grant agreement, SOXESS, reference Ares(2018)1792156 (hereafter 'document 3');
  - Proposal for grant agreement, BioExcel-2, reference Ares(2018)1792181 (hereafter 'document 4');
  - Proposal for grant agreement, X-CAero, reference Ares(2018)1792138 (hereafter 'document 5');
  - Proposal for grant agreement, ChEESE, reference Ares(2018)1792226 (hereafter 'document 6');
  - Proposal for grant agreement, INTERFACE, reference Ares(2018)1792173 (hereafter 'document 7');
  - Proposal for grant agreement, PerMedCoE, reference Ares(2018)1792386 (hereafter 'document 8');
  - Proposal for grant agreement, ESiWACE2, reference Ares(2018)1792268 (hereafter 'document 9');
  - Proposal for grant agreement, CODE-CoE, reference Ares(2018)1792163 (hereafter 'document 10');

[3] These topics are INFRAEDI-01-2018 'Pan-European High Performance Computing infrastructure and services RIA Research and Innovation', INFRAEDI 02 CSA 'Addressing the fragmentation of activities for excellence in HPC applications' and INFRAEDI-03-2018 'Support to the governance of High Performance Computing (HPC) Infrastructures'.

- Proposal for grant agreement, POP2, reference Ares(2018)1792212 (hereafter ‘document 11’);
- Proposal for grant agreement, HiDALGO, reference Ares(2018)179328 (hereafter ‘document 12’);
- Proposal for grant agreement, CoEHCS, reference Ares(2018)1792309 (hereafter ‘document 13’);
- Proposal for grant agreement, ExaPIPE, reference Ares(2018)1792340 (hereafter ‘document 14’);
- Proposal for grant agreement, MaX, reference Ares(2018)1792357 (hereafter ‘document 15’);
- Proposal for grant agreement, EoCoE-II, reference Ares(2018)1792292 (hereafter ‘document 16’);
- Proposal for grant agreement, EDGE, reference Ares(2018)1792276 (hereafter ‘document 17’);
- Proposal for grant agreement, BDEM, reference Ares(2018)1792240 (hereafter ‘document 18’);

– 18 evaluation summary reports on the above-mentioned grant proposals, registered under the following Ares references:

- Evaluation Summary Report on the proposal submitted by EXCELLERAT, European Commission, reference Ares(2018)3847600 (hereafter ‘document 19’);
- Evaluation Summary Report on the proposal submitted by CompBioMed2, European Commission, reference Ares(2018)3847645 (hereafter ‘document 20’);
- Evaluation Summary Report on the proposal submitted by SOXESS, European Commission, reference Ares(2018)3847635 (hereafter ‘document 21’);
- Evaluation Summary Report on the proposal submitted by BioExcel-2, European Commission, reference Ares(2018)3847602 (hereafter ‘document 22’);
- Evaluation Summary Report on the proposal submitted by X-CAero, European Commission, reference Ares(2018)3847646 (hereafter ‘document 23’)
- Evaluation Summary Report on the proposal submitted by ChEESE, European Commission, reference Ares(2018)3847648 (hereafter ‘document 24’);
- Evaluation Summary Report on the proposal submitted by INTERFACE, European Commission, reference Ares(2018)3847677 (hereafter ‘document 25’);

- Evaluation Summary Report on the proposal submitted by PerMedCoE, European Commission, reference Ares(2018)3847682 (hereafter 'document 26');
- Evaluation Summary Report on the proposal submitted by ESiWACE2, European Commission, reference Ares(2018)3847659 (hereafter 'document 27');
- Evaluation Summary Report on the proposal submitted by CODE-CoE, European Commission, reference Ares(2018)3847610 (hereafter 'document 28');
- Evaluation Summary Report on the proposal submitted by POP2, European Commission, reference Ares(2018)3847663 (hereafter 'document 29');
- Evaluation Summary Report on the proposal submitted by HiDALGO, European Commission, reference Ares(2018)3847707 (hereafter 'document 30');
- Evaluation Summary Report on the proposal submitted by CoEHCS, European Commission, reference Ares(2018)3847691 (hereafter 'document 31');
- Evaluation Summary Report on the proposal submitted by ExaPIPE, European Commission, reference Ares(2018)3847697 (hereafter 'document 32');
- Evaluation Summary Report on the proposal submitted by MaX, European Commission, reference Ares(2018)3847664 (hereafter 'document 33');
- Evaluation Summary Report on the proposal submitted by EoCoE-II, European Commission, reference Ares(2018)3847694 (hereafter 'document 34');
- Evaluation Summary Report on the proposal submitted by EDGE, European Commission, reference Ares(2018)3847695 (hereafter 'document 35').
- Evaluation Summary Report on the proposal submitted by BDEM, European Commission, reference Ares(2018)3847620 (hereafter 'document 36').

In its initial reply of 6 November 2018, the Directorate-General for Communications Networks, Content and Technology refused access to the requested documents, based on the exceptions of Article 4(2), first indent (protection of commercial interests), Article 4(3), first subparagraph (protection of the decision-making process), and Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

In your confirmatory application, you requested a review of this position. You supported your request with detailed arguments, which I address in the corresponding sections below.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I can inform you that partial access is granted to documents 19 to 36. The undisclosed parts of these documents have been redacted on the basis of the exception of Article 4(2), first indent of Regulation (EC) No 1049/2001 (protection of commercial interests). Please find these documents enclosed.

As regards document 1 to 18, I wish to inform you that I confirm the initial decision of Directorate-General for Communications Networks, Content and Technology to refuse access, based on the exceptions of Article 4(2), first indent (protection of commercial interests) and Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, for the reasons set out below.

2.1. Protection of commercial interests of a natural or legal person

Article 4(2), first indent of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, […] unless there is an overriding public interest in disclosure'.

In your confirmatory application, you argue that the European Commission was wrong to apply the above-mentioned exception to the documents under the request, and you put forward a number of arguments in support of your position. These arguments can be summarised as follows:

Firstly, you claim that the European Commission has not explained 'how disclosure of the requested documents could specifically and actually' undermine the commercial interests of the grant applicants. Secondly, you argue that the European Commission was wrong to apply by analogy the *Cosepuri v EFSA* judgment[4] to the case at hand. Thirdly, you underline that, in order to apply the above-referred exception, 'it must be shown that the documents at issue contain elements which may, if disclosed, seriously undermine the commercial interests of a legal person'.

Finally, you argue that 'the present request for access does not relate to any of those categories of documents which are covered by a general presumption of confidentiality […]'.

[4] Judgment of the General Court of 29 January 2013, *Cosepuri v EFSA* (hereafter referred to as '*Cosepuri v EFSA* judgment'), Joint Cases T-339/10 and T-532/10, EU:T:2013:38.

As mentioned above, documents 1 to 18 are applications for grant agreements submitted by the participants in a call for proposals launched under the Horizon 2020 programme[5]. The proposals describe in detail the work to be undertaken under the projects, including budgets and respective roles in the projects. They reflect technical know-how and detailed operational aspects concerning the implementation of the projects such as the descriptions of actions and milestones. They also include extensive business information of the participating organisations, including the budget breakdown and the intended approach towards competitors.

Documents 19 to 36 are evaluation summary reports of the above-mentioned grant proposals. The withheld parts of these documents have been redacted as they contain valuable commercial information, including information on budgets, which could be used in future calls for proposals.

The public disclosure of the above-mentioned information would not only damage the commercial interests of the participants, by placing in the public domain sensitive commercial information about their projects, but would also affect their competitive position in the market, as it would reveal their strategies and specific know-how. Moreover, if such information were to be released by the European Commission, it could be used by applicants in future calls for proposals, to the detriment of the participants concerned. In this way, competitors would gain an unfair competitive advantage, thereby harming the position of the private entities concerned.

Therefore, there is a risk that public access to the grant proposals and the redacted parts of documents 1 to 18 would undermine the commercial interests of the private entities concerned. Given the foreseen launch, in summer 2019, of the follow-up call for proposals 'Centres of Excellence on High Performance Computing (HPC) Applications', I consider this risk as reasonably foreseeable and not purely hypothetical.

In this context, I would like to bring to your attention Case T-439/08 (*Agapiou Joséphidès*)[6], where the General Court ruled that 'methodology and expertise […] highlighted as part of the grant application, […] relate to the specific know-how […] and contribute to the uniqueness and attractiveness of applications in the context of calls for proposals such as that at issue, which was intended to select one or more applications, following in particular a comparative review of proposed projects. Thus, particularly given the competitive environment in which [the project promoters] operate, it is necessary to consider that the information in question is confidential'.

Furthermore, in its *Cosepuri v EFSA* judgment, the General Court acknowledged the existence of a general presumption of non-disclosure in cases concerning access to the bids submitted by tenderers in a public procurement procedure in the event that the request for access is made by another tenderer.[7] The General Court also considered that, in order to attain the objective of undistorted competition, it is important that contracting

5 https://ec.europa.eu/programmes/horizon2020/en.

6 Judgment of the General Court of 21 October 2010, *Agapiou Joséphidès v Commission*, T-439/08, EU:T:2010:442, paragraphs 127 to 128.

7 *Cosepuri v EFSA* judgment, cited above, paragraph 101.

authorities do not release information relating to contract award procedures, which could be used to distort competition.[8] This case law has been confirmed in case T-363/14 (*Secolux*).[9]

As the Directorate-General for Communications Networks, Content and Technology pointed out in its reply, the same conclusions apply by analogy to the grant proposals. Indeed, the process to award a grant is also, by its nature, a highly competitive one, in which the information about each proposal serves to determine the success or failure of the applicants. It is thus reasonably foreseeable that disclosing details of competing proposals to the public, and thus to competitors, would undermine the interest set out in Article 4(2), first indent of Regulation (EC) No 1049/2001.

I would also like to underline that Article 149(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (hereafter 'Regulation (EU, Euratom) 2018/1046')[10], concerning the submission of application documents, states that 'the means of communication chosen shall be such as to ensure that there is genuine competition and that the following conditions are satisfied:

> (a) each submission contains all the information required for its evaluation;
>
> (b) the integrity of data is preserved;
>
> (c) the confidentiality of application documents is preserved;
>
> (d) the protection of personal data in accordance with Regulation (EC) No 45/2001 is ensured.'

I take the view that applying Regulation (EC) No 1049/2001 cannot have the effect of rendering the above-mentioned provisions, over which it does not have precedence, ineffective.

Contrary to your statement, I would like to stress that Article 4(2) of Regulation (EC) No 1049/2001 does not require disclosure to 'seriously undermine' the protection of commercial interests. It is sufficient that disclosure would undermine the protection of the commercial interest of the concerned parties.

---

8 Ibid, paragraph 100.

9 Judgment of the General Court of 21 September 2016, *Secolux v European Commission*, T-363/14, EU:T:2016:521, paragraph 49.

10 Official Journal L 193 of 30.7.2018, p. 1–222.

In your confirmatory application, you argue that the reference, in the initial reply, to Article 339 of the Treaty on the Functioning of the European Union, which lays down the obligation of professional secrecy by members of the Union institutions, 'cannot be seen as an argument in favour of the existence of a general rule of confidentiality as far as documents in the context of a call for proposals are concerned'. You outline that the right of access to documents and the duty of professional secrecy and 'are not absolute and mutually exclusive' and that the latter must be weighed 'against the public interest that the activities of the Union institutions take place as openly as possible'.

Although I agree that Article 339 of the Treaty on the Functioning of the European Union does not establish, as such, a general rule of confidentiality with regard to all public procurement documents, I am of the view that the exception relating to the protection of commercial interests based on Article 4(2), first indent of Regulation (EC) No 1049/2001, is an expression of the institution's obligation of professional secrecy, which stems from Article 339 of the Treaty on the Functioning of the European Union. Indeed, as you rightly point out in your confirmatory application, 'in so far as provisions of [secondary legislation] prohibit the disclosure of information to the public, that information must be considered to be covered by the obligation of professional secrecy'[11].

Please also note that the Union legislature has weighed the above-mentioned interest with the public interest in transparency in the activity of the Union institutions by establishing the obligation not to disclose documents where their release would undermine the protection of the commercial interests of the natural or legal persons concerned, unless there is an overriding public interest in disclosure.

Therefore, I consider that the reference in the initial reply to Article 339 of the Treaty on the Functioning of the European Union is appropriate and that the European 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.

In light of the above, I conclude that the use of the exception under Article 4(2), first indent of Regulation (EC) No 1049/2001 on the grounds of protecting commercial interests of a natural or legal person is justified, and that access to grant proposals and the relevant undisclosed parts of documents 1 to 18 must be refused on that basis.

2.2. Protection of privacy and the integrity of the individual

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

[11] Judgment of the General Court of 30 May 2006, *Bank of Austria Creditanstalt v Commission*, T-198/03, EU:T:2006:136, paragraph 74.

In your confirmatory request, you argue that the European Commission 'failed to carry out an examination demonstrating that granting access to [the requested document] would specifically and actually undermine the privacy of [the persons concerned], and neither did it verify whether the risk of the protected interest being undermined was reasonably foreseeable and not purely hypothetical'.

Furthermore, you state that the European Commission 'disregards that the framework applicable for access to documents is [Regulation (EC) No 1049/2001] and not [Regulation (EC) No 45/2001]' and that 'the principles that apply are those established by [the case-law] in respect to the assessment under [Regulation (EC) No 1049/2001]'. In particular, you stress that 'it is for [the European Commission] to prove that (i) access […] would [specifically] and [actually] undermine the protected interest and (ii) there is no overriding public interest in disclosure'.

I would like to draw your attention to the judgment of the Court of Justice in Case C-28/08 P (*Bavarian Lager*)[12], in which the Court ruled that when a request is made for access to documents containing personal data, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[13] (hereafter 'Regulation (EC) No 45/2001') becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been replaced by Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC[14] (hereafter 'Regulation (EU) 2018/1725').

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

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 'requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with […] [the Data Protection] Regulation'.[15]

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

---

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

13 Official Journal L 8 of 12.1.2001, page 1.

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

15 *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), 'there is no reason of principle to justify excluding activities of a professional […] nature from the notion of private life'.[16]

The grant proposals submitted by the applicants contain personal data, in particular the names and contact details, including telephone numbers and personal addresses, of the persons leading each consortium and each partner institution. They also contain personal data from the researchers, including their *curricula vitae* and telephone numbers.

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

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

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.[17] This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for 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 confirmatory application, you do not put forward any arguments to establish the necessity to have the personal data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there is a risk that the disclosure of the requested personal data would prejudice the legitimate interests of the person concerned.

---

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

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

Please note also that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding 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 documents under the request, 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 in question.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

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

In your confirmatory application, you argue, in essence, that there is an overriding interest in transparency of the procedures for the award of grants under the Horizon 2020 framework, notably as regards the public interest in knowing 'whether the award of grants was rightly adjudicated and assigned'. You refer to several Court judgments and you state that 'the principle of transparency becomes even more prevalent when required to ensure greater participation by citizens in the decision-making process and to guarantee that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system'. You also state that '[the principle of transparency] has more weight where, like in this case, the documents relate to an administrative procedure, in which [the European Commission] acts as the selecting body'.

I would like to refer to the judgment of the Court of Justice in Case C-127/13 (*Strack*)[18], in which the Court ruled that, in order to establish the existence of an overriding public interest in transparency, it is not sufficient to merely rely on that principle. The applicant has to show why, in the specific situation, the principle of transparency is especially pressing and capable, therefore, of prevailing over the reasons justifying non-disclosure.[19]

The arguments that you put forward in support of your request do not establish sufficiently how, in the present case, the public interest in knowing whether the grants were rightly adjudicated is particularly compelling so as to prevail over the reasons justifying the refusal to disclose the grant proposals, as explained in section 2.1 above. Whilst I understand that there could indeed be a public interest regarding this subject matter, I consider that such a public interest has been satisfied by the (wide) partial access that is herewith granted to the evaluation summary reports (documents 19 to 36).

---

[18] Judgment of the Court of Justice of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 128.

[19] Ibid, paragraph 129.

The fact that the documents relate to an administrative procedure and not to any legislative act, for which the Court of Justice has acknowledged the existence of wider openness,[20] provides further support to this conclusion.

In these circumstances, I consider that the public interest is better served by protecting the commercial interests of the private entities concerned, in accordance with Article 4(2), first indent of Regulation (EC) No 1049/2001.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered whether partial access could be granted to the documents identified under your request.

As stated above, partial access is herewith granted to documents 19 to 36. As regards the remaining parts of these documents, I consider that further partial access cannot be granted as this would harm the interest referred to in section 2.1 of this decision.

As regards documents 1 to 18, these documents are covered in their entirety by the exception to the public access to documents laid down in Article 4(2), first indent of Regulation (EC) No 1049/2001 for the reasons explained above. Hence, I consider that no meaningful partial access is possible without undermining the interests protected under this provision.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

For the Commission
Martin SELMAYR
Secretary-General

Enclosures: (18)

[20] Judgment of the Court of Justice of 29 June 2010, *Commission v Technische Glaswerke Ilmenau Gmbh*, C-139/07, EU:C:2010:376, paragraphs 53-55 and 60; *European Commission v The Bavarian Lager* judgment, cited above, paragraphs 56-57 and 63.