



EUROPEAN COMMISSION

Brussels, 24.9.2019
C(2019) 6967 final

[REDACTED]
[REDACTED]
1043NZ Amsterdam
The Netherlands

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION NO (EC) 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2018/6020**

Dear [REDACTED],

I refer to your letter of 13 June 2019, registered on the same date, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation (EC) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 16 October 2019, registered on 16 November 2019, addressed to the Directorate-General for Migration and Home Affairs, you requested access to the following:

- 'The grant agreement and/or any written document supporting the following grant: HOME/2016/ISFB/AG/EMAS/0030, given by the European Commission to the Greek Ministry of Defence - General Directorate of Financial Planning and Support (GDFPS) to provide Immediate enhancement of the response to the refugee - migrant crisis by providing them sheltering and accommodation, catering, health care, transportation at hot spots, ensuring by this way health and safe living conditions for the target group (...);

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

- The grant agreement and/or any written document supporting the European Commission's decision to award the Spanish Ministry of Employment and Social Security and the Spanish Red Cross €24.8 million for a project aimed at providing healthcare, food, and shelter to migrants arriving on the southern coast of Spain and in Ceuta and Melilla.'

The European Commission has identified the following documents as falling under the scope of your request:

1) Concerning the grant HOME/2016/ISFB/AG/EMAS/0030:

- Document 1-1: Grant application – Ares(2016)3379514 ;
- Document 1-2: Evaluation report – Ares(2016)3564494 ;
- Document 1-3: Award decision – Ares(2017)584597 ;
- Document 1-4: Signed grant agreement – Ares(2016)4803739 ;
- Document 1-5: Amendment 1 to grant agreement – Ares(2016)7095771 ;
- Document 1-6: Amendment 2 to grant agreement – Ares(2017)1503452 ;
- Document 1-7: Final technical implementation report – Ares(2017)2942237 ;
- Document 1-8: Final report and payment of balance – Ares(2017)6182369.

2) Concerning the grant HOME/2017/AMIF/AG/EMAS/0072:

- Document 2-1: Grant application - Ares(2018)2764996 ;
- Document 2-2: Evaluation report – Ares(2018)3357972 ;
- Document 2-3: Award decision – Ares(2018)3432579 ;
- Document 2-4: Signed grant agreement – Ares(2018)5505624 ;
- Document 2-5: Amendment to grant agreement – Ares(2018)6500284.

In its initial reply of 20 May 2019, the Directorate-General for Migration and Home Affairs fully disclosed document 2.3. Documents 1-2, 1-3, 1-4, 1-5, 1-6, 2-2, 2-4, 2-5, were partially refused and documents 1-1, 1-7, 1-8 and 2-1 were fully refused on the basis of Article 4(2), first indent (protection of commercial interests), Article 4(1)(b) (protection of privacy and the integrity of the individual) and Article 4(1)(a), first indent (protection of public security) of the Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position concerning the partially and fully refused documents. You underpin your request with detailed arguments, which I will 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 fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I can inform you that:

- wide partial access is granted to document 1-7, subject only to the redaction of personal data;
- partial access is granted to document 1-8;
- wider partial access is granted to documents 1-2, 1-5, 2-2 and 2-5.

As regards documents 1-1 and 2-1 and the redacted parts of documents 1-3, 1-4, 1-6 and 2-4, I regret to inform you that I have to confirm the initial decision of the Directorate-General for Migration and Home Affairs to refuse access, based on the exceptions provided for in Article 4(2), first indent (protection of commercial interests) and Article 4(1)(b) (protection of privacy and the integrity of the individual) of the Regulation (EC) No 1049/2001, for the reasons set out below.

Please also note that documents 1-2 and 2-2 contain information about the grant applications other than the two ones requested by you. As this information falls outside the scope of your request, the relevant paragraphs have been redacted.

2.1. Consultation of the Greek authorities

The document 1-7 originates from the Greek authorities. According to Article 4(4) of Regulation (EC) No 1049/2001, as regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed. According to Article 4(5) of Regulation (EC) No 1049/2001, a Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.

Under the provisions of Article 4(4) and (5) of Regulation (EC) No 1049/2001 and with a view to taking into account the arguments put forward in your confirmatory application, a renewed third-party consultation of the Greek authorities was initiated by the Secretariat-General at confirmatory stage.

The Greek authorities agreed to the disclosure of the document concerned, subject only to the redaction of personal data on the basis of Article 4(1)(b) (protection of privacy and integrity of the individual).

2.2. Protection of commercial interests

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'.

First, I note that Article 4(2), first indent of Regulation (EC) No 1049/2001 must be interpreted consistently with Article 339 of the Treaty on the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing ‘information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components’. Applying Regulation (EC) No 1049/2001 cannot have the effect of rendering the Article 339 of TFEU, over which it does not have precedence, ineffective.

Secondly, Article 4(2), first indent of Regulation (EC) No 1049/2001 must be interpreted consistently with the provisions of the Financial Regulation³ and its Rules of Application⁴ relating to access to information and confidentiality, which were applicable at the time of the signature of the documents in question. Those provisions contain guarantees of confidentiality and limit the information to be provided in respect to public tenders. Furthermore, as neither Regulation (EC) No 1049/2001 nor the Financial Regulation contain any provision expressly giving one regulation primacy over the other, the right to disclosure of documents under Regulation (EC) No 1049/2001 cannot apply in contradiction with the specific confidentiality provisions laid down in the Financial Regulation and its Rules of Application, applicable at the time, as this would result in these provisions being deprived of their meaningful effect.

Furthermore, the General Court in its *Cosepuri*⁵ judgement confirmed that Regulation (EC) No 1049/2001 and the Financial Regulation have different objectives and do not contain any provision expressly giving one regulation primacy over the other. Therefore, it is appropriate to ensure that each of those regulations is applied in a manner which is compatible with the other and which enables their coherent application.

Thirdly, in its judgment in Case T-439/08, 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’⁶.

³ Regulation (EU, Euratom) No. 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No. 1605/2002, Official Journal L 298 of 26.10.2012, p.1, as amended.

⁴ Commission Delegated Regulation (EU) No. 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No. 966/2012 of the European Parliament and the Council on the financial rules applicable to the general budget of the Union, Official Journal 362 of 31.12.2012, p.1, as amended.

⁵ Judgment of the General Court of 29 January 2013, *Cosepuri Soc. Coop. pA v European Food Safety Agency (EFSA)*, T-339/10, EU:T:2013:38, paragraph 85.

⁶ Judgment of the General Court of 21 October 2010, *Kalliope Agapiou Joséphidès v European Commission and Education, Audiovisual and Culture Executive Agency (EACEA)*, T-439/08, EU:T:2010:442, paragraph 127;

Documents 1-1 and 2-1 are grant applications submitted in the context of grants HOME/2016/ISFB/AG/EMAS/0030 and HOME/2017/AMIF/AG/EMAS/0072, respectively. They describe in detail the proposed actions to be conducted through the grant, methodologies, internal organisation, particular know-how, strategy and other specific information with competitive value, such as the scope and description of actions, their timetable and funding perspectives. This includes, for example, the descriptions of the planned activities, the elaboration of specific approaches to the problems described, pricing and reasoning how resources (including equipment, logistics, accommodation, catering, transportation and medical assistance services) will be spent etc. Such information undoubtedly constitutes inside knowledge, experience and specific know-how belonging to the entity that submitted the grant applications. This know-how was taken into account by the Commission when evaluating the grant applications and, therefore, had a major impact on the selection of these two applications for funding. The public disclosure of such information would undermine the commercial interests of the applicants, as it would give other potential grant applicants in future calls the possibility to copy from these applications and use it to support their own application.

In its judgment in Case T-339/10, the General Court ruled that ‘EFSA did not err in considering, in essence, that there was a general presumption that access to the bids submitted by the other tenderers would, in principle, undermine the interest protected. The applicant has not put forward any evidence to justify the conclusion that, in the present case, that presumption did not apply to the documents disclosure of which was requested.’⁷ I consider this general presumption of non-disclosure to apply by analogy to grant applications. Please note that, since the grant applications are covered by the general presumption of non-disclosure, the Commission does not need to consider a partial access in such cases.

I also note that the exception relating to commercial interests can be applied to non-commercial entities, such as public bodies in the Member States, which is the case in these two grants. Please see to that regard the judgment of the General Court in Case T-439/08⁸. In recent case-law, the General Court also clarified that a public company, but also a private company fulfilling tasks in the public interest, can have commercial interests.⁹ In such cases, the commercial interests of the applicants is to submit a proposal that will be granted financial assistance and to have their investment in developing a viable grant proposal, in terms of time and resources, protected from other potential, current or future, grant applicants. The Commission also has an interest in not revealing the applicants' know-how in order not to distort the fair competition in subsequent calls for proposals, and therefore as a funding entity, to ensure that the projects selected in future calls win on their own merits, and not on the basis of the methodology developed by others.

⁷ *Cosepuri Soc. Coop. pA v European Food Safety Authority (EFSA)*, cited above, paragraph 101.

⁸ *Kalliope Agapiou Joséphidès v European Commission and Education, Audiovisual and Culture Executive Agency (EACEA)*, cited above, paragraphs 127-128.

⁹ Judgment of the General Court of 5 December 2018, *Falcon Technologies International LLC v European Commission*, T-875/16, EU:T:2018:877, paragraphs 48-49.

Documents 1-4 and 2-4 are grant agreements signed between the Commission and the applicants for the grants HOME/2016/ISFB/AG/EMAS/0030 and HOME/2017/AMIF/AG/EMAS/0072, respectively. The two agreements contain seven and eight annexes, respectively. In both cases, Annex 1 ('Description of the action') contains the grant application itself. Therefore, Annex 1 of both grant agreements have been withheld completely, for the reasons explained in the paragraphs above. The Annex 3 of both grant agreements ('Estimated budget of the action and model financial statement') have been partially redacted concerning the parts related to the detailed budget estimations and bank details of the grant applicants, which constitutes a commercially sensitive information.

Documents 1-5, 1-6 and 2-5 are amendments to Annex 1 and 3 of the respective grant agreements. In line with the previous paragraph, the amended annexes 1 and 3 have been redacted to the same extent as the original ones attached to the grant agreements.

Documents 1-2 and 2-2 are the evaluation reports containing the evaluation, by way of comments, of the strengths and weaknesses of the grant applications submitted for HOME/2016/ISFB/AG/EMAS/0030 and HOME/2017/AMIF/AG/EMAS/0072. The public disclosure of those comments concerning the respective merits of the grant applicants would give third parties (including other grant applicants) indications about the qualities of the submitted grant applications as well as the specific 'know-how' of the grant applicants. The evaluation of the grant applications other than the two you are interested in fall outside of the scope of your application. Such paragraphs have therefore been redacted.

Finally, document 1-8 is a final report and payment of the balance. Passages and pages related to the budget, final calculation sheet and detailed budget execution overview have been redacted as this represents commercially sensitive information.

Against this background, it results clearly that the above-mentioned confidential information qualifies as commercially sensitive business information and that its disclosure would pose a real and non-hypothetical risk for the commercial interests of grant applicants.

Consequently, I conclude that, pursuant to Article 4(2), first indent of Regulation (EC) No 1049/2001 (protection of commercial interests), access to documents 1-1 and 2-1 and certain parts of documents 1-2, 1-4, 1-5, 1-6, 1-8, 2-2, 2-4 and 2-5 cannot be granted as this would pose a real and non-hypothetical risk for the commercial interests of grant applicants.

2.3. 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'.

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹⁰, the Court of Justice 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 data¹¹ (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed 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/EC¹² (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’.¹³

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

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’.¹⁴

In your application, you state that you are not interested ‘in the disclosure of the names of people and handwritten signatures in any of the documents’. These personal data therefore do not fall in the scope of your request. You expressed interest only in the ‘job title/job positions of the members, observers and/or experts, as well as the departments and the organizations’. I inform you that the composition of the evaluation committee as well as the organisational units of its members have been disclosed in documents 1-2 and 2-2.

¹⁰ 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.

¹¹ Official Journal L 8 of 12.1.2001, page 1.

¹² Official Journal L 205 of 21.11.2018, p. 39.

¹³ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

¹⁴ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

However, the documents requested contain other personal data such as the e-mail addresses, office numbers, phone and fax numbers, handwritten dates, initials, etc., which you do not explicitly put outside the scope of your application.

The names¹⁵ of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

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.¹⁶ 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 the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 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 subjects’ legitimate interests might be prejudiced.

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

¹⁵ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

¹⁶ 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.

As to the handwritten signatures, which constitute biometric data, there is a risk that their disclosure would prejudice the legitimate interest of the person concerned.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 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 the disclosure of the personal data concerned.

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 disclosure.

First, in your confirmatory application you indicate that ‘transparency and the participation of citizens in the decision-making process of how EU emergency assistance under the AMIF and ISF is spent’ constitute an overriding public interest. You also state that ‘migration is one of the top political issues in the EU, and according to EC one of its ten priorities during 2014-2019’ and ‘one of the main concerns of Europeans’.

Please note that such general considerations cannot provide an appropriate basis for establishing that the principle of transparency was in this case especially pressing and capable, therefore, of prevailing over the reasons justifying the refusal to disclose the documents in question.¹⁷ I would also like to refer you to the judgment in the *Strack* case¹⁸, where the Court of Justice 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 and its importance, but that an applicant has to show why in the specific situation the principle of transparency is in some sense especially pressing and capable, therefore, of prevailing over the reasons justifying non-disclosure.

Secondly, you indicate as an overriding public interest the fact that the grants are ‘implemented through direct management by DG HOME, meaning that DG HOME was the institution in charge of deciding how the resources were going to be spent within the budget ceiling for emergency assistance.’ Concerning this point, I note that the way in which a grant is managed, be it a direct, shared or indirect management, has no implications on the existence of the overriding public interest prevailing over the reasons justifying the non-disclosure of the documents or parts thereof.

Thirdly, in your confirmatory application, you claim that the public interest outweighs the protection of the competitive interests of the Member State ‘because the grants are awarded mainly based on the assessment of the existence of an emergency situation (a ‘public’ situation) in the Member State and not the competitive elements of its proposal’.

¹⁷ Judgment of the Court of Justice of 14 November 2013, *Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission*, Joined Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 93.

¹⁸ Judgment of the Court of Justice of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraphs 128-131.

In the same vein, you claim that ‘the essential aspects for awarding these grants are whether a MS is facing an emergency situation under the applicable regulation and whether the proposed activities can have an impact in the country concerned. It does not appear anywhere in the (partially disclosed) evaluation reports that the competitiveness of the proposal or the information with competitive value, such as any description of the planned activities and their costs, were not taken into account for selecting one or more of the applications.’

Both grants in question were indeed awarded directly, without the publication of a call for proposals. Instead, they were awarded within a total budget ceiling foreseen under annual work programmes and following an evaluation by a specifically appointed evaluation committee. However, while the fact whether a Member State is facing an emergency situation is one of the awarding criteria, it is by no means the ‘essential element’. In fact, both the Asylum, Migration and Integration Fund and the Internal Security Fund are *de facto* competitive procedure because the amount of available budget is limited by a financing decision and it is allocated to applications based on their relevance and their potential impact to address the emergency situation, following guidance and criteria applicable in the same way to all applications received. In practice, this means that, in case there would not be enough budget for all applications received, applications could get rejected. This situation has already occurred in the past. Therefore, putting the commercially sensitive information in the public domain would affect the competitive position of the grant applicants in similar future procedures. For this reason, I conclude that your argument mentioned above does not alter the competitive character of the grant procedures at hand.

In relation to this argument, you also mention in your confirmatory application that such ‘future competitive positions in ‘similar’ procedures are, by definition, purely hypothetical scenarios’. Based on my findings, emergency assistance will remain a complimentary but essential tool for Member States to address migration and border control issues. The ‘Interim Evaluation of the Asylum, Migration and Integration Fund 2014-2017 (SWD(2018)339)’¹⁹ has highlighted the role of this fund in strengthening solidarity and responsibility sharing among Member States. The ‘Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund (COM(2018)471)’²⁰ clearly foresees the use of emergency assistance in the future programming period in order to strengthen the EU’s capacity to immediately address unforeseen or disproportionate heavy migratory pressure in one or more Member States characterised by a large or disproportionate inflow of third-country nationals. Similar provision can be found in the ‘Proposal for a Regulation of the European Parliament and of the Council establishing the Internal Security Fund (COM(2018)472)’²¹. Since it is very likely that similar mechanisms will exist in future, I conclude that this is not a hypothetical situation.

¹⁹ <https://eur-lex.europa.eu/legal-content/fr/TXT/?uri=CELEX:52018SC0339> .

²⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562944615334&uri=CELEX:52018PC0471> .

²¹ https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-internal-security-fund-regulation_en.pdf .

Fifthly, you mention that ‘DG HOME should ensure sound information on the implementation of the resources for which it is responsible’, more specifically documentation that ‘explains the grounds and the decision-making processes behind the award decision’ and that ‘explains how the money is going to be spent, how expenditure is going to be monitored and how impact is going to be assessed’.

The General Court held that ‘the transparent conduct of public tenders procedures, which aims to make possible the monitoring of compliance with the relevant rules and principles does not require the publication of documents or information relating to the know-how, methodology or business relationships of the tenderers’²². In addition, the Directorate-General for Migration and Home Affairs and the European Commission have already been publishing abundant information online. This includes:

- press releases after each award²³;
- fact sheets on certain countries²⁴;
- details about emergency assistance in the Annual Activity Report²⁵;
- Court of Auditors audits, including performance audits²⁶;
- all the interim evaluations and impact assessments for both the Asylum, Migration and Integration Fund and the Internal Security Fund.²⁷

Furthermore, all grants signed with the Directorate-General for Migration and Home Affairs include a dedicated visibility requirements clause and beneficiaries often publish information on their websites or can be contacted to know more about concrete results.

Finally, concerning the transparency of the implementation of the EU Budget, the Financial Transparency System of the Commission is fully operational and all relevant information regarding the grants in reference can be found there by using relevant filters²⁸.

Nor have I been able to identify any public interest capable of overriding the public and private interests protected by Article 4(2), first indent of Regulation (EC) No 1049/2001.

²² Judgment of the General Court of 22 May 2012, *Sviluppo Globale v Commission*, T-6/10, EU:T:2012:245, paragraph 88.

²³ https://ec.europa.eu/home-affairs/what-is-new/news_en.

²⁴ https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/background-information_en.

²⁵ https://ec.europa.eu/info/sites/info/files/home_aar_2018_final.pdf.
https://ec.europa.eu/info/publications/annual-activity-report-2017-migration-and-home-affairs_en

²⁶ <https://www.eca.europa.eu/en/Pages/PublicationSearch.aspx>.

²⁷ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180612_swd-2018-339-commission-staff-working-document_en.pdf.
<https://publications.europa.eu/en/publication-detail/-/publication/cc11a6d5-f9d1-11e8-a96d-01aa75ed71a1>.

²⁸ http://ec.europa.eu/budget/fts/index_fr.htm.

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,²⁹ provides further support to this conclusion.

Please note also that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting (further) partial access to the documents requested.

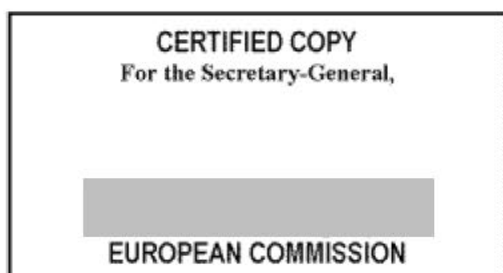
As stated by the Court of Justice, where the document requested is covered by a general presumption of non-disclosure, such document does not fall within an obligation of disclosure, in full, or in part.³⁰ Therefore, no partial access has been considered for grant applications (documents 1-1 and 2-1).

Concerning the documents 1-2, 1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 2-2, 2-4 and 2-5, partial access or wider partial access has been granted, as explained above. The withheld parts are covered by the exception 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, as explained above.

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,



For the Commission

[Redacted signature area]

Enclosures: (10)

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

³⁰ Judgment of the Court of Justice of 28 June 2012, *European Commission v Éditions Odile Jacob*, C-404/10 P, EU:C:2012:393, paragraph 133.