



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

The Director-General

Brussels, 21st December 2022
CNECT.R.4

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Germany

Via email:
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7a9ca01b@asktheeu.org](mailto:ask+request-11955-7a9ca01b@asktheeu.org)

Subject: Your request for access to document –EASE 2022/5800

Dear Mr Rudl,

We refer to your email of 10 October 2022 wherein you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation (CE) No 1049/2001’), which was registered on 12 October 2022 under the reference number indicated in the subject of this letter.

1. SCOPE OF YOUR APPLICATION

Your request reads as follows:

“(..)All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, transcripts, recordings and minutes/notes) relating to the meeting between Filomena Chirico and Bouygues Europe on 13. 06. 2022..(..)”.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

The following documents have been identified as falling within the scope of your request:

- Email exchanges, 5 May 2022 to 23 May 2022, ARES(2022)8278179, (**“Document 1”**)
- BTO, Meeting, 13 June 2022, ARES(2022)4879800, (**“Document 2”**)
- Newspaper article, ARES(2022)3470744, (**“Document 3”**)

3.ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that partial access can be granted to Documents 1 and 2, whilst access is denied for Document 3, as its disclosure and the disclosure of (parts of) the Documents 1 and 2 is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Partial Disclosure

(i) Protection of commercial interests

The first indent of Article 4(2) 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*”.

This provision must be interpreted in light of Article 339 of the Treaty of 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.

We could not obtain the views of the concerned third parties about a potential disclosure of these (parts of the) documents within the given timeframe. After assessment, we have come to the conclusion that a disclosure would undermine their commercial interests. Parts of Documents 1 and 2 contain sensitive business information, views and positions related to commercial interests of the legal entity concerned. There is a real and non-hypothetical risk that disclosure of these parts of the above-mentioned documents could undermine and seriously affect the commercial interests of the company at question. Therefore, access to these parts of the Documents 1 and 2 cannot be granted as the disclosure is prevented by the exception to the right of access referred to above.

Consequently, the above-mentioned parts of Documents 1 and 2 have been blanked out.

(ii) Protection of privacy and integrity of individuals

Full disclosure of Document 1 and 2 is also prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- names and functions of Commission staff members not pertaining to senior management;
- names, functions and signatures of other natural persons.

Article 9(1)(b) of the Data Protection Regulation¹ does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to

¹ 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, OJ L 295, 21.11.2018, p. 39.

you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, we conclude that, pursuant to Article 4(1)(b) Regulation 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

B. Non -disclosure

We regret to inform you that access to Document 3 cannot be granted as its disclosure is prevented by exceptions laid down in Article 4 of Regulation 1049/2001.

Protection of commercial interests

Document 3 is covered by the exception of Article 4(2) first indent of Regulation 1049/2001 for the protection of commercial interests.

Document 3 is a newspaper article that is available online only to the subscribers of the newspaper. This article is subject to intellectual property rights. Its public disclosure would undermine the commercial interests of the legal entities and could potentially harm the intellectual property rights. Therefore, access is refused to these documents as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

4. PARTIAL ACCESS

We have considered whether partial access could be granted to Document 3 to which access is refused. However, partial access is not possible considering that these parts are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

5. OVERRIDING 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 the documents identified. 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 aforementioned (parts of the) documents which are being withheld but we have not been able to identify such an interest

6. REUSE OF DOCUMENTS

You may reuse public documents which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the (parts of) disclosed Documents 1 and 2 originating from the Commission free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that

you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that Document 2 was drawn up for internal use under the responsibility of the relevant staff member of DG CONNECT. It solely reflects the author's interpretation of the interventions made. It does not reflect the position of nor does it commit the Commission, DG CONNECT and/or any third party referred to and cannot be quoted as such.

7. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position. Such confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission **by asking for a review via your portal² account** (available only for initial requests submitted via the portal account), or via the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels

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

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures: (2)

² <https://www.ec.europa.eu/transparency/documents-request>