



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

The Director-General

Brussels, 17th November 2020
CNECT.R.4

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Advance copy via email:
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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your access to documents request with RefGestDem 2020/5912

Dear Ms da Silva,

We refer to your e-mail of 6 October 2020 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 1049/2001'), registered under the abovementioned reference number. We also refer to our holding reply, dated 27 October 2020, our reference Ares(2020)5973985, 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

By your application, you requested access to documents:

'[...] documents:

- relating to policies or processes to guarantee the independence and/or managing potential conflicts of interest at the European Digital Media Observatory;*
- relating to the process of recruiting and vetting members of the administrative and executive boards of the European Digital Media Observatory;*
- Any assessment by DG CNECT of the independence and governance policies of the winning application for the European Digital Media Observatory tender.
[...]'*

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We identified the following documents as falling within the scope of your request:

- Annex to the Commission Implementing Decision amending a Multi-Annual Work Programme 2019 and 2020 for financial assistance in the field of Connecting Europe Facility (CEF) Telecommunications sector (C(2020) 1078 final) (our ref. Ares(2019)7283811) (**Document 1**)
- Call for Tenders European Digital Media Observatory - Smart 2019/1087 (our ref. Ares(2019)6069275) (**Document 2**)
- Evaluation Report European Digital Media Observatory - Smart 2019/1087 (our ref. Ares(2020)1781062) (**Document 3**)
- EDMO Governance Body and Charter of the Governance Body of the European Digital Observatory (our ref. Ares(2020)4756992) (**Document 4**)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001 and taking into account the opinion of the third party, we have arrived at the conclusion that full access can be granted to two documents, partial access can be granted to one document and disclosure is refused for one document. Partial and full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Full disclosure

Documents 1 and 2 are fully disclosed. They are available via the following links:

Document 1: <https://ec.europa.eu/digital-single-market/en/news/amended-cef-telecom-multi-annual-work-programme-2019-2020-adopted>

Document 2: <https://etendering.ted.europa.eu/document/document-file-download.html?docFileId=69308>

Please be informed that, in particular, pages 71-75 of Document 1 and pages 15,16,18,21, 34 and 35 are relevant to your request.

B. Partial disclosure

(i) Protection of privacy and integrity of individuals

Full disclosure of Document 4 is 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, functions and contact information 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,

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, I 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.

C. Non-disclosure

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

Parts of this document are covered by the exception of Article 4(2) first indent of Regulation 1049/2001 which 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.

These parts of the document contain sensitive business information relating to the tender description which is based on the organisation's specific know-how and to technical aspects of the tender. Disclosure of these parts of the document would undermine the tenderer's competitive position in the market and seriously affect its commercial interest, including intellectual property rights.

Furthermore, parts of Document 3 are covered by the exception of Article 4(3) second subparagraph of Regulation 1049/2001 which provides that *'[a]ccess to a document, containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure'*.

These parts of the document contain opinions for internal use as part of deliberations and preliminary consultations. Their disclosure would undermine the institution's decision-making process linked to the selection of tenders for procurement and/or proposals for grants. The Commission services must be free to explore all possible options in the evaluation of tenders free from external pressure. The risk of disclosing sensitive information regarding the Commission services' evaluation of tenders would deter Commission services from putting forward their views. The remaining parts of

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.

Document 3 fall outside the scope of the request. Therefore, access to this document must be refused.

4. OVERRIDING INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) and Article 4(3) 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 aforementioned parts of the documents but we have not been able to identify such an interest.

5. REUSE OF DOCUMENTS

You may reuse Documents 1 and 2 which have been produced by the European 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.

Document 4 originates from a third party. Please note that it is disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

6. 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 a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)

Roberto Viola

Enclosures: (3)