



## EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director-General

Brussels  
CNECT/RV

Ms Rachel Hanna  
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***Advance copy via email:***

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### **REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT**

**Subject: Your application for access to documents- GestDem 2021/0347**

Dear Ms Hanna,

We refer to your email dated 20 January 2021 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 15 February 2021, our reference Ares(2021)1262746, 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**

Your application reads as follows:

*'Dear Communications Networks, Content and Technology,*

*Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am submitting the following access to documents request.*

*I would like to request all documents relating to the impact assessment carried out on the classification of company and company ownership data as a high value data set under the Open Data Directive, including:*

*1. All documents relating to the cost-benefit analysis (including the impact assessment study on high value datasets by Deloitte et al);*

*2. All documents, including emails, relating to the methodology of the above-mentioned impact assessment study;*

*3. All documents relating to the impact on personal data and balance with the GDPR, including any legal opinions.*

*Yours faithfully, '*

Given the wide-scope of your request we contacted you on 9 February 2021 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001 (our reference, Ares(2021)1130611). By your email dated 11 February 2021 you narrowed down the scope of your request to the following documents:

- The Impact Assessment Study on High Value Datasets by Deloitte et al.
- All documents relating to the impact on personal data and balance with the GDPR, including any legal opinions

## **2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST**

We have identified the following documents which fall within the scope of your application after having been restricted as set out above:

- Impact Assessment study on the list of High Value Datasets to be made available by the Member States under the Open Data Directive (**'Document 1'**)
- Impact Assessment study on the list of High Value Datasets to be made available by the Member States under the Open Data Directive – Executive Summary (**'Document 2'**)
- Email dated 23 September 2020 received from a Member State (**'Document 3'**) and its attachment, a position paper submitted by this Member State with regard to the protection of personal data in High-Value Datasets (HVDs) (**'Document 4'**)
- Email exchanges between DG CONNECT and EDPS in the period from 16 December 2020 to 13 January 2021 (**'Document 5'**) and the attachments:
  - o **a)** Commission Staff Working Document Impact Assessment accompanying the document Proposal for a Commission Implementing Regulation laying down a list of High Value Datasets (**'Document 6'**) and
  - o **b)** Impact Assessment study on the list of High Value Datasets to be made available by the Member States under the Open Data Directive. Please note that this document is already listed above as 'Document 1'.
- Letter from the European Family Businesses (EFB) to DG CONNECT, dated 6 November 2020 (**'Document 7'**)
- Emails dated November 2020 received from two Member States (**'Document 8'**) and the attached joint non-paper (**'Document 9'**)

## **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 full access can be granted to three documents. Partial access can be granted to two documents and access is denied for four documents as disclosure of these parts is prevented by the exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

## **A. Full disclosure**

Documents 1, 2 and 6 are fully disclosed.

## **B. Partial disclosure**

### *(i) Protection of privacy and integrity of individuals*

Full disclosure of Documents 5 and 7 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 Commission staff members not pertaining to the senior management
- Names, functions, contact details and handwritten signatures of other natural persons

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

### *(ii) Protection of the decision-making process*

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘[a]ccess to a document, drawn up by an institution for internal use or received by the an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’

Part of Document 5 is covered by the above-mentioned exception as it contains information related to the views and activity of certain Member States which would undermine the ongoing decision-making process related to the adoption of the Implementing Act defining a list of high-value public sector datasets (HVDs), if publicly released.

Consequently the abovementioned part of Document 5 has been blanked out.

## **C. Non- disclosure**

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<sup>1</sup> 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.

We regret to inform you that access to Documents 3-4 and 8-9 cannot be granted as disclosure is prevented by the above-mentioned exception to the right of access laid down in Article 4(3) first subparagraph of Regulation 1049/2001, with regard to the protection of the ongoing decision-making process.

These documents contain information related to the views and positions of the certain Member States on the relevant topic, in the context of the ongoing discussions and decision-making process with regard to the adoption of the Implementing Act defining a list of high-value public sector datasets (HVDs), as mentioned above. This information would undermine the ongoing decision-making process, if publicly released.

Moreover, parts of Documents 3 and 8 contain personal data, in particular the names and contact details of Commission staff members not pertaining to the senior management and the names, functions and contact details of other natural persons, thus their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section B(i).

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

#### **4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exception laid down in Article 4(3) of Regulation 1049/2001 applies, 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 documents but we have not been able to identify such an interest.

#### **5. REUSE OF DOCUMENTS**

You may reuse public documents 1-2, parts of Document 5 and Document 6, 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 the Commission documents](#). You may reuse the documents disclosed 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 document/documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that Documents 1 and 2 concern a study carried out by external experts. They do not reflect the position of the Commission and cannot be quoted as such.

Parts of Document 5 and Document 7 originate from a third party. Please note that they are 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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

(e-Signed)  
Roberto Viola

Enclosures: (5)