



EUROPEAN COMMISSION
CONSUMERS, HEALTH, AGRICULTURE AND FOOD EXECUTIVE AGENCY

Director

Luxembourg, 11 March 2021

Chafea/VW/AM/MS/gs

[chafea.d\(2021\)1930059](https://chafea.d(2021)1930059)

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NOTE TO THE ATTENTION OF MR ALVARO MERINO

Subject: Your confirmatory application Ref Ares(2021)1621344 concerning access to documents Ref Ares(2021)1118450

Dear Sir,

We refer to your email 03/03/2021, by which you request, pursuant to Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents, a review of the position taken by Chafea in reply to your initial application of **09/02/2021** Ref Ares(2021)1118450.

1. SCOPE OF YOUR APPLICATION

By your initial application of **09/02.2021**, you had requested access to:

- a) All documents and correspondence related to the proposition, organization and development of grants coordinated by INTERPORC, including the details of expenditure and its beneficiaries.
- b) Meeting records (emails, minutes, reports, briefing papers, drafts, memos...) involving officials and/or people representing the interests of the Organización Interprofesional Agroalimentaria del Porcino de Capa Blanca (INTERPORC)
- c) Correspondence within your personnel and/or the European institutions concerning the above-mentioned organisation.

Through its reply dated 02/03/2021, Chafea granted full access to documents nr 9, 10, 13, 24 and 25, partial access to documents nr 2, 3, 4, 8, 11, 12, 14, 15, 17, 18, 19, 23, 26, 27, 28 and refused access to documents nr 1, 5, 6, 7, 16, 20, 21, 22 as disclosure is prevented by the exceptions to the right of access laid down in Article 4 of the Regulation.

Through your confirmatory application, you request a review of the position by Chafea.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, Chafea conducts a fresh review of the reply given at the initial stage.

In your confirmatory application, you raise that the application of the exception of protection of the commercial interest of a legal person as outlined in Article 4(2) first indent of the Regulation was too broad and Chafea failed to fully and adequately consider the public interest in the release of the documents.

Below please find explanation and justification of your arguments and the position taken by CHAFEA.

1. Protection of commercial interest

In your application, you state that *‘As far as I understand, the FromFarmToFork and LetsTalkAboutPork campaigns were not directed to improve the performance of INTERPORC in the internal market. On the contrary, they were oriented to reinforce the status of European pork meat in China and also promote the consumption of pork meat in Spain (along with other Member States). As such, I believe that putting this information in the public domain would not affect its competitive position on the market as much as stated’.*

The reason for which Chafea refused access to certain documents was the need to protect the commercial interest of the applicant. According to the article 4(2), first indent of Regulation 1049/2001 *‘[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.’*

The exception laid down in Article 4(2) first indent of Regulation 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.

The access to documents nr 1, 5, 6, 7, 16, 20, 21, 22 was refused as they concern the Grant application, Annex 1 Part A Description of action, Annex 1 Part B Description of action and Annex 2 Estimated budget of the grant agreement.

The grant application is structured in such a way as to respond specifically to the call for proposal, is based on a specific presentation and contains information particular to the undertaking, which enables it to exhibit its expertise. It contains detailed information and presentation of the proposing organization, detailed description of the action, methodologies, how the project is implemented, know-how, breakdown of budget, involvement of experts or partners, information on detailed operational aspects, timetables, business strategies. Disclosure, to the public, of such information relating to the execution of an action would undermine the protection of the relevant natural or legal person’s know-how, strategy and creativity and thus their commercial strength, as it would be used by competitors in future similar procedures, to the detriment of the natural or legal persons concerned.

In this context, I would also like to bring to your attention case T-439/08¹, 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.

Annex 1 Part A and Part B ‘Description of action’ and Annex 2 ‘Estimated budget’ are formulated based on the information included in the grant application, they repeat the information included therein and therefore, the same approach for disclosure shall apply to them.

Access to documents nr 11, 12, 14, 15, 18, 26, 27, and 28 was partially refused. The information included therein concern the names of the applicant’s contractors and subcontractors which is part of the business relations disclosure of which would undermine the protection of the relevant natural or legal person’s commercial strength as it would be used by the competitors to the detriment of legal person concerned. Whereas, access to documents nr 8, 19, 23 was partially refused as they contain other sensitive commercial data such as VAT numbers and bank accounts which normally deserve protection, as they are not public and their public disclosure would undermine the integrity of financial operations of the entities they belong.

Moreover, according to the article 339 of the Treaty² ‘The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components’.

We have considered whether partial access could be granted to the documents requested however, it is not possible to grant access to an expunged version of the documents. They may be entirely covered by the exceptions or the remaining parts after expunging the confidential information might be meaningless or illegible.

Based on the above, I consider that there is a real and non-hypothetical risk that public access to the above-mentioned information would negatively affect the commercial activities of the companies concerned, in particular in the competitive context, and thus seriously undermine their commercial interests.

2. Overriding public interest in disclosure

The exception laid down in Article 4(2) first indent of Regulation 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.

I analyzed the argument put forward in your application ‘*I need this information as part of journalistic research into the way the pork meat lobby in Spain exercises its influence and gets financed*’ and I conclude that it does not substantiate the existence of public interest nor does it outweighs the harm caused by disclosure of the commercially sensitive information.

¹ Judgement in Agapiou Joséphidès v Commission, T-439/08, EU:T:2010:442, paragraphs 127 to 128.

² Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Consolidated version of the Treaty on European Union Consolidated version of the Treaty on the Functioning of the European Union Protocols Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 Tables of equivalences, OJ C 202, 7.6.2016, p. 1–388

Nor have I been able to identify any public interest capable of overriding the interests protected by Article 4(2), first indent, of Regulation 1049/2001.

I conclude, therefore, that the protection of commercial interests prevails.

3. Pork lovers Europe Campaign

In your application you express *'I would like you to incorporate the incorporate the PorkLovers campaign to the present request and internal review (I asked for the same documents in the request Ref Ares(2021)738921 from 29 January 2021, but it was totally rejected). I see no sense in providing access to documents related to the FromFarmToFork and LetsTalkAboutPork campaigns but not to those related to the PorkLovers one'*.

When assessing a confirmatory application for access to documents, the institution conducts a fresh review of the reply given at the initial stage. As the Pork Lovers Europe Campaign was not part of the initial request in subject, it is not possible to include and assess it under this request.

Moreover, Chafea has already addressed your request concerning Pork lovers Europe Campaign Ref Ares(2021)738921 at the confirmatory stage (Ref Ares(2021)1504589 of 26/02/2021). Through its reply, we informed you that Pork lovers Europe Campaign is a so-called 'simple programme' managed in shared management for which the granting authority is the Member State, in this case Spain. CHAFEA's role ends with the end of evaluation and we are not in a possession of the Grant Agreements, reports, deliverables, financial statements nor payment requests, the documents you requested the access to. As specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in the Regulation applies only to existing documents in the possession of the institution. As already explained Chafea does not hold any documents concerning the organisation and development of the Pork lovers Europe Campaign.

4. MEANS OF REDRESS

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 263 and 228 of the EC Treaty, respectively.

Please acknowledge the receipt of this letter by writing to us at CHAFEA-ACCESS-DOCUMENTS@ec.europa.eu

Yours sincerely,

(e-signed)

Véronique Wasbauer