Subject: Your application for access to documents of 17\textsuperscript{th} January 2014

Reference: GestDem N° 2014/276

Dear Mr Gerloff,

I refer to your above-mentioned application for access to documents of 17\textsuperscript{th} January 2014.

I would like, first of all, to thank you for your interest in the activities of our Directorate-General.

As stated in our holding reply of 29\textsuperscript{th} January 2014 (Ares(2014)205133), we are handling your application and we expect to be able to provide you with our Directorate-General's position by 28\textsuperscript{th} February 2014.

I would like to refer in particular to points 2 and 3 of your application. I am in a position to inform you that, at the moment, two procurement procedures are on-going in order to replace the contracts you refer to. They are known at our Directorate-General under the references "PN/2013/065 (FOAE / Licences)" and "PN/2013/068 (FOAE / Services)". Therefore your request for access covers in principle all documents related to those procurement procedures, which are running in parallel.

Given the large number of documents involved, I believe it may be useful to keep you informed about the work we have done so far, in order to try and find a fair solution in the spirit of Article 6(3) of Regulation (EC) No 1049/2001.

As of today, we have identified 82 documents which are registered in Ares (the Commission's main official document repository) under the files corresponding to the above-mentioned procurement procedures.

After a preliminary assessment, these documents pertain to the following categories:

- **Category A** (1 document). Note containing the official approval of the Orientation Document for the two procurement procedures. The Orientation Document is itself annexed to this document.
– **Category B** (74 documents). Documents related to the participation of other EU Institutions, Agencies and Other Bodies (hereafter EUIs) in the two procurement procedures. This category can be further subdivided into the following sub-categories:

  - **Sub-Category B1** (1 document). Note inviting all the EUIs to join the above-mentioned procurement procedures. This note included three annexes. The first one was a considerably abridged version of the Orientation Document referred to under Category A above. The other two were a survey of the needs in the fields covered by the procurement procedures and a standard "Memorandum of Understanding" governing the participation of other EUIs in procurement procedures run by DIGIT. Those EUIs wishing to participate in them had to fill in the survey, sign the Memorandum of Understanding and return both documents to the Commission.

  - **Sub-Category B2** (65 documents). This sub-category contains the EUI's replies to the note mentioned under Sub-Category B1. For those EUIs having replied affirmatively, it contains the filled in survey and the signed Memorandum of Understanding, with or without a cover note. A few updates to surveys already returned and requests for extension of the deadline to reply pertain also to this sub-category.

  - **Sub-Category B3** (4 documents). This sub-category contains other documents related to the note mentioned under Sub-Category B1, such as in particular requests for clarification of particular aspects of the survey or of the procedure to be followed.

  - **Sub-Category B4** (4 documents). Exchanges between DIGIT and a EUI, which is currently not included in the contracts to be replaced, about the possibility for this EUI to join the procurement procedures.

– **Category C** (5 documents). Exchanges between DIGIT and Microsoft in the context of the procurement procedures. In particular, invitation to submit an initial offer and exchanges about requests to postpone the deadline for submission.

– **Category D** (2 documents). Documents linked to formal steps of the on-going procurement procedures required by the Financial Regulation and/or its Rules of Application. In particular, appointment of Opening Committee and Evaluation Committee.

My understanding is that you want to obtain documentation outlining the rationale for the on-going procurement procedures and any future plans which the Commission may have in the area they cover. It seems to me that, by and large, the document which is likely to be most useful to you in that context is the Orientation Document pertaining to Category A. The said document, of 49 pages including its 10 annexes, describes in-depth the current situation from the contractual point of view, reviews the Commission's main needs, outlines the financial background, sets out the scope and objectives of the procurement procedures, assesses the related risks and opportunities and defines the Commission's objectives. It contains a number of more detailed annexes describing product scenarios, explaining how the existing contracts work, etc. The last annex to this document is a paper outlining the Commission's recently reassessed strategy in the area of office automation, of which the on-going procurement procedures are one component, and setting out the next steps.
For these reasons, further to your application, DIGIT will undertake a thorough assessment of the above-mentioned document under Regulation (EC) No 1049/2001, in order to guarantee that the largest possible access to it is granted, and in particular that only those parts thereof covered by the exceptions foreseen in Article 4 of the Regulation, if any, are masked.

As stated above, Category B relates to contacts with the other EUIs as regards the two procurement procedures. It covers a large number of documents, but these are very repetitive and of, essentially, an administrative nature. In addition, while not prejudging the result of a detailed assessment, large parts of those documents are likely to be covered by one or more of the exceptions foreseen in Article 4 of Regulation (EC) No 1049/2001, in particular the ones related to the protection of the decision-making process and to the protection of a legal person's commercial interests (in this case those of the Commission itself). In any case, I believe they are very unlikely to be of any interest for the purposes you are seeking, with the exception of the Orientation Document under Sub-Category B1 — but this, as mentioned above, is just a summary of the one pertaining to Category A.

Therefore, I would suggest that, instead of assessing all these documents under the Regulation, DIGIT compiles a table listing all the EUIs and stating, for each of them, whether they are part of the existing contracts and whether they have confirmed that they want to be associated to the two on-going procurement procedures. We can also supply you a copy of the standard "Memorandum of Understanding" that those EUIs having replied affirmatively had to sign and return to the Commission.

As regards Categories C and D, I believe they are also very unlikely to be of any interest for the purposes you are seeking, apart from the fact of confirming that the two procurement procedures are currently on-going, which you already know through the present letter. In any case, again without prejudging the result of a detailed assessment, they are very likely to be covered by one or more of the exceptions foreseen in Article 4 of Regulation (EC) No 1049/2001, in particular the ones related to the protection of the decision-making process and (for Category D) to the protection of personal data.

In summary, we propose to grant you the largest possible access to the Orientation Document under Category A and to provide you with a table summarising the information contained in the documents under Category B, as well as the standard "Memorandum of Understanding".

I believe that, by taking into account your main needs, the proposed way of proceeding strikes a good balance between your right of access to documents and the limited resources which, as a public body, we are in a position to devote to applications formulated in such wide-ranging terms. This approach is therefore very much in the spirit of the fair solution to which Article 6(3) of Regulation (EC) No 1049/2001 refers.

For these reasons, unless we hear from you to the contrary, DIGIT's assessment of your initial application, which we still expect to complete by 28th February, will be carried out along the lines described above as regards its points 2 and 3.

I trust that you will find this approach constructive.

Yours sincerely,

E-Signed
Santiago DEL PINO
Access to Documents Correspondent