



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The acting Director General

Brussels,

Subject: Your application for access to documents – Ref. GestDem 2022/3293

Dear Mr Roorda,

I refer to your application dated 3 June 2022¹, in which you make a request for access to:

- *“all documents concerning the addition of IBF International Consulting to the Early Detection and Exclusion System database.*
- *all communication between the European Commission and IBF International Consulting related to the addition to the Early Detection and Exclusion System database”.*

I also refer to our email of 30 June 2022², in which we explained that extended time limit is needed for the purpose of internal consultations in accordance with Article 7(3) of Regulation (EC) No 1049/2001 regarding public access to documents³.

Having examined your request under the provisions of Regulation (EC) No 1049/2001, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation and in Article 140 of Regulation 2018/1046⁴ (hereinafter “the Financial Regulation”).

¹ Ref. Ares(2022)4450971.

² Ref. Ares(2022)5053298.

³ 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 - Official Journal L 145 of 31 May 2001, p. 43.

⁴ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 - Official Journal L 193 of 30 July 2018, p.1.

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In line with Article 140 of the Financial Regulation, the publication of limited information concerning sanctioned economic operators is strictly limited to the cases where it is necessary to reinforce the deterrent effect achieved by the adopted administrative sanction, with full respect for the data protection requirements set out in Regulation (EU) 1725/2018⁵ and Regulation (EU) 2016/479⁶.

The responsible authorising officer of the institution concerned takes such decisions on the publication on a case-by-case basis by following either the relevant final judgment or a final administrative decision or, where applicable, following the recommendation referred to in Article 136(2) of the Financial Regulation. Publication appears on the following Internet page:

http://ec.europa.eu/budget/edes/index_en.cfm.

Therefore, disclosure of information to the extent that it relates to non-published decisions of exclusion or to decisions, whose publication has expired, would run against the above-mentioned restrictions imposed by the Financial Regulation, as this would result in those restrictions being deprived of their meaningful effect.

Besides, information related to non-published exclusion and/or of financial penalty, or to those whose publication has expired, which are included in the database referred to in Article 142 of the Financial Regulation, cannot be provided, on the basis of the following exceptions of Article 4 of Regulation (EC) No 1049/2001 since their disclosure would undermine:

- Article 4(1)(b) - the privacy and the integrity of the individual: the names of individuals, including names of company representatives, constitute personal data that may only be transferred to recipients if the latter establish the necessity of having the data transferred, which is not the case here;
- Article 4(2), first indent - protection of commercial interests: the release of those data would negatively affect the reputation of the entity concerned and clearly undermine its commercial interests.

No overriding public interest in disclosure

The exception laid down in Article 4(2) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the documents.

You argue that there is public interest to know about information registered in the Early Detection and Exclusion System database on this entity, since it is a consulting firm, which has received the most EU funding for the period 2014-2020 and on the basis of the fact that it operates in geopolitically sensitive areas.

However, you have not provided any proof supporting your arguments showing the existence of an overriding public interest in disclosure at this point in time, given that this entity it is no longer included in the Early Detection and Exclusion System database.

⁵ 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 (EC) No 45/2001 and decision No 1247/2002/EC - Official Journal L 295 of 21 November 2018, p. 39.

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) – Official Journal L 119 of 4 May .2016, p. 1.

Neither has the Commission identified such an overriding public interest, based on the elements in its possession.

In this case, there is no overriding public interest in disclosure as the public interest is better served by enabling the Commission and other authorised users to protect the Union's financial interests in full respect of the rights of the natural and legal persons concerned by your request and who are not included anymore in the above mentioned database.

For all these reasons, I do not see in the case at hand a public interest within the meaning of Regulation (EC) No 1049/2001, that is to say objective and general in nature and which is not indistinguishable from individual or private interests that would outweigh the public interest in protecting the personal data and commercial interests of the natural and legal persons concerned by your request.

Partial Access

I have also considered whether partial access could be granted to the documents requested. However, partial access in accordance with Article 4(6) of Regulation 1049/2001 is not possible considering that the data to which you seek access must be protected in their entirety, as explained above.

Means of Redress

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 its position. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-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)

Maciej POPOWSKI