



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The acting Director-General

Brussels,

Subject: Your application for access to documents – Ref GestDem 2021/5811

Dear Ms Bulic Cojocariu,

I refer to your application dated 30 September 2021¹, registered on the same day². You applied for access to:

‘Documents, including but not limited to project documentation, contracts and reports, and all correspondence related to the project “Together for introduction of more opportunities and respect - TIMOR”, funded under IPA II 2017 Action Programme of the EU Support for Education, Employment and Social Policy; Support for the De-institutionalisation Process in Social Sector, for North Macedonia.’

I also refer to our request for clarification and to your response of 21 October³. You clarified:

‘I would like to receive the documents related to the implementation of the project and financial data, including:

- the full proposal, based on which funding was granted for the implementation of this project; this should include the approved budget for the implementation of the project;*

¹ Ref. Ares(2021)5962506.

² Ref. Ares(2021)5962825.

³ Ref. Ares(2021)6470843.

Ms Ines Bulic Cojocariu
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- *any reports, such as mid-term reports, or evaluations submitted or carried out so far which explain the progress that is being made in the implementation of the project*

On 12 November 2021⁴, we informed you that an extended time limit was needed for the purpose of internal consultations.

Your application concerns the following documents:

1. 1st Quarterly Progress Reports, Project "Together for introduction of more opportunities and respect", Ares(2021)7330678;
2. 2nd Quarterly Progress Reports, Project "Together for introduction of more opportunities and respect", Ares(2020)6330529;
3. 3rd Quarterly Progress Reports, Project "Together for introduction of more opportunities and respect", Ares(2020)6330529;
4. 4th Quarterly Progress Report, Project "Together for introduction of more opportunities and respect" Ares(2021)61133;
5. 5th Quarterly Progress Report, Project "Together for introduction of more opportunities and respect" Ares(2021)7348350;
6. 6th Quarterly Progress Report, Project "Together for introduction of more opportunities and respect", Ares(2021)4396025;
7. Special Conditions of Grant Contract IPA 2019/413-899, Ares(2019)7914795;
8. Annex I, Description of the Action, Ares(2019)7914795;
9. Annex II, General Conditions, Ares(2019)7914795;
10. Annex III, Budget for the Action, Ares(2019)7914795;
11. Annex IV, Procurement rules for beneficiary(ies), Ares(2019)7914795;
12. Annex V, Standard request for payment and financial identification form, Ares(2019)7914795;
13. Annex VI, Interim Narrative Report, Ares (2020)7828971;
14. Annex VII, Terms of reference for expenditure verification, Ares(2019)7914795;
15. Annex IX, Standard template for transfer of asset ownership, Ares(2019)7914795;
16. Grant application, Ares(2019)7914795.

⁴ Ref. Ares(2021)6975847.

Documents 9, 11, 12, 14 and 15 are publicly available and you can find them in the following link: [Online Services - Online Services - Programmes de coopération extérieure - Commission européenne \(europa.eu\)](https://online-services-commission-europa.eu)

As regards the remaining documents, having examined them under the provisions of Regulation (EC) No 1049/2001⁵ and taking into account the opinion of third parties concerned, I have decided that:

- Partial access can be granted to documents 1, 2, 3, 4, 5, 6, 7 as full disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(b) (protection of the privacy and integrity of the individual) and Article 4(2), first indent (commercial interests of a natural or legal person, including intellectual property) of Regulation (EC) No 1049/2001;
- Access must be refused to documents 8, 10, 13 and 16 as disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(b) (protection of the privacy and integrity of the individual) and Article 4(2), first indent (commercial interests of a natural or legal person, including intellectual property) of Regulation (EC) No 1049/2001.

The justifications are as follows:

1. Protection of the privacy and the integrity of the individual

Complete disclosure of the documents 1, 2, 3, 4, 5, 6, 7, 8, 10, 13 and 16 is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001. In particular, these documents contain the names, contact details and signatures of Commission staff members not pertaining to the senior management, as well as of staff members of other organisations.

Article 9(1)(b) of the Data Protection Regulation⁶ 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) of Regulation (EC) No 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.

⁵ 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.

⁶ 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, Official Journal L 295 of 21 November 2018, p. 39.

2. Protection of the commercial interests of a natural or legal person, including intellectual property

Article 4(2), first indent, of Regulation (EC) No 1049/2001 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’.

Documents 1, 2, 3, 4, 5, 6, 7, 8, 10, 13 and 16 contain sensitive commercial data belonging to third parties, which are not public, and their disclosure would undermine the integrity of financial operations of the entities they belong to. I refer in particular to bank accounts of grant beneficiaries, the full proposal and the detailed budget.

These documents reflect the specific know-how and experience belonging to the entity. That know-how was taken into account by the Commission when evaluating the applications submitted under the call for proposals, and, therefore, contributed to the attractiveness of awarding the contract to that entity. In turn, that information had a major impact on selection of the application of this specific beneficiary from among others participating in this call. The public disclosure of such information would undermine its "commercial interests", as it would give other potential applicants in future calls the possibility to copy from that application and use it to support their own application.

In this context, I would also like to bring to the case law of the Court of Justice of the European Union.

In case T-439/08, the General Court ruled that "methodology and expertise [...] highlighted as part of the [...] application, [...] relate to the specific know-how [...] and contribute to the uniqueness and attractiveness of applications in the 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".

Furthermore, in case T-339/10, the General Court ruled that "[i]t follows from all the foregoing that [the Commission] did not err in considering, in essence, that there was a general presumption that access to the bids submitted by the other tenderers would, in principle, undermine the interest protected. The applicant has not put forward any evidence to justify the conclusion that, in the present case, that presumption did not apply to the documents disclosure of which was requested".

This case-law applies *mutatis mutandis* in the case of grants.

The exception of Article 4(2), first indent, of Regulation (EC) No 1049/2001 has to be read in light of Article 339 of the Treaty on the Functioning of the European Union, which requires staff members of the European Union institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy.

Public access to the above-mentioned information would undermine the commercial interests of the grant beneficiaries concerned. Therefore, I conclude that access to this data should be refused.

3. No overriding public interest in disclosure

To the extent that access is refused on the basis of Article 4 (2), first indent, of Regulation 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosure. For such an overriding public interest to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. it must outweigh the interest provided by virtue of Article 4 (2), first indent, of Regulation (EC) No 1049/2001.

In your application, you do not invoke any interest except your own interest which is of a private nature. For these reasons, you have not established arguments that would show the existence of an overriding public interest in disclosure at this point in time. Neither has the Commission identified such an overriding public interest, based on the elements in its possession. 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 commercial interests of the participating tenderers.

4. Partial Access

We have considered whether partial access could be granted to documents 8, 10, 13, 16 but this was deemed impossible, as the sensitive elements are integral to them. Please note that we cannot provide you with more detailed information on these documents without disclosing their substance which is protected by the quoted exceptions laid down in Article 4 of Regulation (EC) No 1049/2001.

5. 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 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 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

[e-signed]

Maciej Popowski

Encl./ Documents 1, 2, 3, 4, 5, 6 and 7