



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels 26 April 2021
HOME.E.2.001/PS

***By registered letter with
acknowledgment of receipt***

Luisa Izuzquiza
Open Knowledge Foundation Deutschland e.V.
Singerstr. 109
10179 Berlin
Germany

Advance copy by email:
lizuzquiza.m5v88cag58@fragdenstaat.de

Subject: Your application for access to documents – Ref GestDem No 2021/1970

Dear Ms Izuzquiza,

We refer to your request dated 29/03/2021 in which you make a request for access to documents, registered on the same date under the above-mentioned reference number.

You request access to the “grant agreement with the Greek authorities for the construction of 3 new reception centres on the Greek islands of Samos, Kos and Leros, including all relevant annexes”.

Your request concerns the following documents:

- Grant Agreement, Reference Number: HOME/2020/AMIF/AG/EMAS/0127 (24/11/2020) that includes the following documents:

- Special Conditions of the Grant Agreement
- Annex I Description of the Action
- Annex II General Conditions (‘the General Conditions’)
- Annex III Estimated budget of the action and model financial statement (which also includes a summary financial statement)
- Annex IV Model technical report (Annex IV.1: model technical progress report, Annex IV.2: final technical implementation report)
- Annex V Model financial statement (included in Annex III)
- Annex VI Model terms of reference for the certificate on the financial statements when required by the grant agreement
- Annex IX Specific conditions related to visibility.

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your request for access cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of the Regulation.

More concretely, and based on Article 4(2) and Article 4(3) of Regulation 1049/2001, linked to the protection of commercial interests and the avoidance of undermining the institutions decision making procedures, the disclosure of the aforementioned documents is refused.

- *Article 4(2), first indent, of Regulation (EC) No 1049/2001 (access refused for protection of commercial interests):*

The documents that you seek to obtain contain commercially sensitive information of the Member State that submitted them.

Grant agreements, including their annexes, contain information relating to methodologies, internal organisation, particular know-how, strategy and other country specific proprietary information with competitive value. Examples of such proprietary information contained in these documents are the description of the planned activities, the results envisaged and reasoning how resources are to be spent for the planned activities.

Given the competitive procedure – where grant applications are awarded without the publication of calls for proposals but within total budget ceilings foreseen under annual work programmes and following an evaluation by a specifically appointed evaluation committee – from which the above mentioned project originates, the disclosure of the document requested would undermine the protection of the interests of the Member State that submitted it, as putting this information in the public domain would affect its future competitive position¹.

Therefore, the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to the documents.

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 document. I observe that you have not provided any arguments to support any pressing need for the public to obtain access to the document. We have also examined whether there could be an overriding public interest in disclosure but we have not been able to identify such an interest.

- *Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 (access refused so it would not undermine the institution's decision making process):*

The documents that you have requested are meant to serve inter alia as a reference tool for the monitoring of the project implementation towards the achievement of the results and outputs, which is an obligation of the Commission, to ensure sound financial management of EU funds. In this sense, the Commission receives information from the beneficiary, on a regular basis or whenever necessary, based on which various measures could be taken, including decisions on the future implementation of the grant agreement.

Moreover, both by their nature and according to Union legislation in the field of grants, awards are founded on a relationship of trust between the contracting parties. Thus, the grantees must

¹ The exception relating to commercial interests can also be applied to non-commercial entities: Judgment of the General Court of 21 October 2010, *Kalliope Agapiou Joséphidès v European Commission and Education, Audio-visual and Culture Executive Agency (EACEA)*, T-439/08, ECLI:EU:T:2010:442, paragraphs 127-128.

be able to communicate any relevant information to the contracting authorities, in particular for the purpose of project monitoring, without fear that the authorities will communicate to third parties items of information whose disclosure could be damaging to them².

Therefore, the exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies to these documents.

The exception laid down in Article 4(3) applies unless there is an overriding public interest in disclosure of the documents. I observe that you have not provided any arguments to support any pressing need for the public to obtain access to the documents. We have also examined whether there could be an overriding public interest in disclosure but we have not been able to identify such an interest.

Furthermore, we have also considered whether partial access could be granted to the identified documents to which access is refused. However, we have come to the conclusion that the remaining parts after expunging the confidential information will be meaningless.

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 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 Brussels

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

Yours sincerely,

e-signed
Monique PARIAT

² Judgment of the Court of Justice of 14 February 2008, *Varec v Commission*, C-450/06, ECLI:EU:C:2008:91, paragraph 36.