



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,
CNECT/B1/JS/er

Mrs Amelia Andersdotter

Email: amelia.andersdotter@ep.europa.eu

Subject: Your application for access to documents – Ref GestDem No 2014/972 under Regulation 1049/2011 regarding public access to European Parliament, Council and Commission documents

Dear Mrs Andersdotter,

We refer to your correspondence of 21 February 2014 (Ares(2014)429078) whereby you make a request for access to documents, registered by us under the above-mentioned reference number.

We also refer to our clarification request of 18 March 2014 (Ares(2014)786236) and to our letter of 31 March 2014 (Ares(2014)999641) whereby you have been informed that the Commission extended the deadline by 15 working days in accordance with Article 7(3) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereafter Regulation 1049/2001).

Your application concerns the following documents: all documents which the European Commission (hereafter EC) considers part of the stakeholder consultation materials for the Connected Continent proposal. More precisely, the request concerns specific lists of stakeholders (with names and organisations accounted for), stakeholder documentation received, records of communications with stakeholders and/or stakeholder materials received which the Commission considers "inputs".

1. Lists of stakeholders

We regret to inform you that no documents were found that would correspond to the description given in your application. We are, therefore, unable to handle your application.

2. Relevant inputs received by the Commission in the framework of the Connected Continent proposal

We have identified documents corresponding to the criteria set out in your request. Please find them attached.

It should be stressed however, that, as mentioned in the impact assessment¹ accompanying the Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012, due to timing constraints, resulting from the request of the Spring European Council in March for concrete measures to achieve a Single Market for ICT as early as possible, a fully-fledged public consultation on the specific measures in accordance with the Commission's guidelines could not be organised.

Nevertheless, the Commission received a number of unsolicited written contributions on the specific issues of the proposal that allowed to have a very granular view of the opinions of the market participants and of the interest groups on all aspects of the proposal.

In this framework, a number of inputs were provided to the European Commission on the own initiative of the stakeholders concerned notably Rewheel, ECTA, British Sky Broadcasting Limited and Bouygues Europe.

Some of the documents to which you have requested access contain personal data, namely names of natural persons.

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, "the institution shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data." Names of natural persons are clearly personal data as defined in Article 2(a) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data² (hereafter Regulation 45/2001).

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable³. According to Article 8(b) of this Regulation, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. The necessity of having the abovementioned personal data disclosed to the public has not been demonstrated. Please also be aware that the exception in Article 4(1) b is an absolute exception not balanced by an overriding interest. Therefore, we are disclosing the documents requested expunged from this personal data namely the identities of the persons concerned.

Please be also informed that access to some of the documents falling under the scope of your request cannot be granted, as disclosure is prevented by one of the exceptions laid down in Article 4(2) first indent of Regulation 1049/2001. Indeed, the relevant documents contain commercially sensitive business information, the disclosure of which could potentially damage the commercial interests of the undertakings concerned.

¹ (SWD(2013) 331 final, 11.9.13)

² OJ L 8 of 12.1.2001, p. 1

³ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, not yet reported

We have examined to which extent the exception laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in disclosure. Such an interest must firstly be a public interest and secondly outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2) mentioned above.

Therefore, we have concluded that access to the aforementioned documents cannot be granted.

Please note that in accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the position above.

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
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles

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

Yours sincerely,

(e-Signed)
Robert Madelin