



EUROPEAN CLIMATE, INFRASTRUCTURE AND  
ENVIRONMENT EXECUTIVE AGENCY (CINEA)

Director

Brussels,  
INEA/DB

Mr Paolo PRIERI

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**BY E-MAIL ONLY**

**Subject: Decision on the disclosure of the requested document under your application for access to documents under Regulation (EC) No 1049/2001<sup>1</sup> – INEA 41/2020 and European Ombudsman Complaint 465/2021/VB**

**Ref.: Your initial application of 4 December 2020**

**Your confirmatory application of 17 January 2021**

**European Ombudsman Complaint 465/2021/VB**

Dear Mr Prieri,

The European Climate, Infrastructure and Environment Executive Agency (hereafter 'CINEA'), following the proposal for a solution and suggestions of the European Ombudsman concerning your Complaint 465/2021/VB, has reviewed its position taken in reply to your initial application of 4 December 2020 and your confirmatory application of 17 January 2021, pursuant to Regulation No. 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereafter 'Regulation 1049/2001').

**1. Documents falling under the scope of Complaint 465/2021/VBI**

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<sup>1</sup> Official Journal L 145 of 31.5.2001, p. 43.

**Amendment n°1 to grant agreement n° INEA/CEF/TRAN/M2014/1057372 concerning Action 2014-EU-TM-0401-M signed on 17 April 2020**, was released partially on the initial and confirmatory stage, based on Article 4 (1) (b) protection of privacy and integrity of individuals and Article 4 (2), first indent, commercial interests of natural and legal person, including intellectual property rights, of Regulation 1049/2001.

## **2. Assessment and conclusion under Regulation 1049/2001**

CINEA has considered the observations and the suggestions made by the Ombudsman and has re-examined the file. The competent authorities of Italy and France and their designated implementing body Tunnel Euralpin Lyon Turin SAS (TELT) were consulted again in line with Article 4(5) of Regulation 1049/2001.

Following this re-examination, I am pleased to inform you that the Agency has decided to grant you wider partial access to amendment n°1 to the Grant Agreement for action 2014-EU-TM-0401-M.

Certain, very limited, parts of the documents have been blanked out, as their disclosure is prevented by exceptions to the right of access provided for in Article 4 (1) (a) first indent (protection of the public interest as regards public security, Article 4 (1) (b) (disclosure would undermine the protection of privacy and the integrity of the individuals, in particular in accordance with Community legislation on the protection of personal data) and Article 4 (2), first indent (disclosure would undermine the protection of the commercial interests of legal entities, including intellectual property rights), for the reasons set out below.

### **2.1. Protection of the public interest as regards public security**

Article 4(1) (a) of Regulation 1049/2001 provides that '*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards: [...] public security [...].*'

Very extended access is now given to the indicative start and end dates of the project's activities (Article I.4 Activities - I.4.1 Activities timetable), to the future timing estimates in the detailed activities descriptions and to the table of project's milestones, the means of verification and their indicative completion dates (Article I.5 Milestones and means of verification). The consulted Member States have provided their consent to this wider disclosure, with very few redactions of future dates. Public disclosure of these dates could, as in the past, lead to situations that could threaten the smooth planned progress of the activities and undermine the security measures protecting the worksite and safeguarding the minimum safety conditions of workers, ensuring public and private safety in the project area.

There is a real and not hypothetical risk that public access to this information would pose a threat to public order and security. I therefore conclude that the refusal of access to the withheld dates is justified on the basis of Article 4(1)(a), first indent of Regulation 1049/2001.

I would also like to point out that Article 4(1)(a) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

### **2.2. Protection of the privacy and the integrity of the individual**

The proposal for a solution and suggestions of the Ombudsman did not cover the Agency's initial assessment regarding the non-disclosure of personal data and the assessment of the Agency in this regard remains as follows.

According to Article 4(1) (b) of Regulation 1049/2001, access to a document is refused 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."*

Some redactions concern personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725, i.e. the Data Protection Regulation applicable to the Union institutions, bodies, offices and agencies (EUDPR)<sup>2</sup>.

Article 9(1)(b) of the EUDPR requires that the necessity to have the personal data transmitted must be established by the recipient (i.e. applicant of the access to documents request) and it does not allow the transmission of these personal data where there is reason to assume that the legitimate interests of the data subject might be prejudiced. In your application you have not established a specific need to obtain personal data, nor can it be assumed that such disclosure is proportionate and would not prejudice the legitimate rights of the persons concerned. Therefore, the requirements for disclosing personal data are not met according to the EUDPR.

Please note that the exception of Article 4(1)(b) of Regulation 1049/2001 is an absolute exception, that is to say, its applicability does not entail counterbalancing with an overriding public interest.

### **2.3. Protection of commercial interests**

The Ombudsman noted in her proposal for a solution that it is reasonable to consider, in particular, that the indicative breakdown of estimated eligible costs per activity and per beneficiary is commercially sensitive information, for which there does not appear to be a clear public interest in obtaining access to this information.

Article 4(2), first indent of Regulation 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.'*

Significant access to the document is being granted, including to the tables presenting the estimated financial information of the project, such as the distribution of the EU grant between the two beneficiaries, the sources of funding of the project and the amount co-financed by each beneficiary. Limited redactions concern this very specific commercially sensitive information.

Therefore, redactions applied do not exceed the limits of what was appropriate and necessary in the light of the protected interest and I conclude that the refusal of access to the withheld information is justified on the basis of Article 4(2) first indent of Regulation 1049/2001.

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<sup>2</sup> 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, OJ L 295, 21.11.2018, p. 39.

Based on points 2.1 to 2.3 above, please find attached a revised redacted version of the requested document.

Yours sincerely,

Dirk BECKERS

*[e-signed]*

Annex: Revised redacted version of amendment n°1 to grant agreement n°  
INEA/CEF/TRAN/M2014/1057372 concerning Action 2014-EU-TM-0401-M