



European Ombudsman

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Mr Dirk Beckers
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Strasbourg, 01/06/2021

Complaint 465/2021/VB

CONFIDENTIAL

Subject: Proposal for a solution in the above case on the Innovation and Network Executive Agency's (INEA) refusal to grant full public access to an amendment to a grant agreement concerning the Lyon-Turin base tunnel project

Dear Mr Beckers,

I am writing to seek a solution to this case, brought to my Office by Mr Paolo Prieri, on behalf of Presidio Europa NO TAV, on 9 March 2021. The case concerns a request for public access to an amendment¹ to a grant agreement related to the Lyon-Turin base tunnel project.

We have examined the document in question, as well as the documentation relating to the consultation that was conducted in line with Article 4(5) of Regulation 1049/2001.

The Lyon-Turin base tunnel project is a large-scale infrastructure project, which receives public funding in order to be built within a certain timeline. From the information available in the amendment to the grant agreement, I understand that the deadline for the completion of the project was extended because of delays in its implementation. This delay arguably affects

¹ Entitled "amendment n ° 1 to grant agreement n ° INEA / CEF / TRAN / M2014 / 1057372 concerning Action EU-TM-0401-M signed on 17 April 2020".



the public, who will now be able to benefit from the new infrastructure at a later date than originally foreseen.

It is an open question whether disclosure of the redacted parts of the amendment to the grant agreement containing information about the revised indicative start and end dates of the project's activities, the revised description of the project's milestones and their revised indicative completion dates could undermine the commercial interests of the entities involved in the project. I note, in this respect, that similar information was published *before* the revised timelines were agreed upon (the original timelines and milestones were made public). Specifically, in 2016, the European Commission granted full public access to the grant agreement. That disclosure does not seem to have undermined any protected interests.

I also note that some of the redacted dates in the amendment to the grant agreement relate to delays that have *already* occurred. Their potential commercial sensitivity is thus necessarily limited.

Notwithstanding the answer to the open question set out above, my view is that there is in any event an overriding public interest in disclosure of much of this information, namely the information relating to delays in completing the project.²

Delays in the completion of this major infrastructure project risk affecting significant and important public interests. By making public the adapted timeline, the public can monitor the implementation of the project and check whether and why delays are occurring.

This conclusion does not cover certain very specific information, namely the indicative breakdown of estimated eligible costs per activity and per beneficiary, the means of verification, and the personal data included in the document, since there does not appear to be a clear public interest in obtaining access to this information. It is reasonable to consider, in particular, that the breakdown of eligible costs is commercially sensitive information.

My proposal to you is therefore that the European Climate, Infrastructure and Environment Executive Agency (CINEA), which succeeded and replaced INEA on 1 April 2021, **now reviews its position on the complainant's public access request, taking into account my above observations, with a view to granting the widest possible access to the amendment to the grant agreement.**

I would be grateful to receive your reply by **5 July 2021**. Once we have received your reply to the proposal, we will send a copy of it to the complainant together with a copy of this proposal.

² Judgment of the Court of Justice of 1 July 2008 in case C-39/05 P and C-52/05 P, Sweden & Turco v Council, para. 44: <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-39/05>.



Yours sincerely,

Emily O'Reilly
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