



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director-General

Brussels, 24th March 2021
CNECT.R.4

Mr Alexander Fanta
netzpolitik.org
Rue de la Loi 155
1040 Bruxelles
Belgium

Advance copy via email:
ask+request-9026-a98447b8@asktheeu.org

REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your request for access to documents - GestDem 2021/0605

Dear Mr Fanta,

We refer to your request for access to documents pursuant to 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 (hereinafter 'Regulation 1049/2001') that you introduced on 9 February 2021 via email and which was registered on the same day under the above-mentioned reference number. We also refer to our holding reply, dated 2 March 2021, our reference Ares(2021)1573572, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATION

By your application, you request access to the following:

Dear Communications Networks, Content and Technology,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

- All documents including e-mails, draft reports, studies and other material on the planned revision of the eIDAS Regulation as announced by the Commission. My request includes, but is not limited to, a presentation by Commission personnel to the Council working group on telecommunications on January 7th, 2021.[...]

Given the wide-scope of your request we contacted you on 22 February 2021 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001 (our reference, Ares(2021)1404544). By your email dated 22 February 2021, you narrowed down the scope of your request to the following documents:

- Back to office reports from meetings with stakeholders (including a presentation by Commission personnel to the Council working group on telecommunications on 7/1/2021)
- Studies (draft reports)
- Emails (interservice steering group comments)

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified the following documents, which fall within the scope of your application, after having been restricted as set out above:

- Ares(2021)1509275: BTO TTE Council WG 07.01.2021 (**Document 1**) and the Commission's presentation (**Document 2**)
- Ares(2021)1504609: BTO eIDAS cooperation network webinar 08.07.2020 (**Document 3**)
- Ares(2021)1504868: BTO meeting with Eurosmart 22.10.2020 (**Document 4**)
- Ares(2021)1505170: BTO meeting with Facebook 15.09.2020 (**Document 5**)
- Ares(2021)1505423: BTO meeting with European signature dialogue 23.06.2020 (**Document 6**)
- Ares(2021)1508721: BTO meeting with Bundesdruckerei 13.03.2020 (**Document 7**)
- Ares(2021)1508877: BTO meeting with Denmark's digital agency 17.11.2020 (**Document 8**)
- Ares(2021)1274229: BTO meeting with the Netherlands 21.10.2020 (**Document 9**)
- Ares(2021)672556: eIDAS final evaluation report (**Document 10**)
- Ares(2020)7501623: Draft final report eIDAS review (**Document 11**)
- Ares(2020)7902304: Minutes of ISG meeting 15.12.2020 (**Document 12**)
- Ares(2020)7344916: ISG comments 04.12.2020 (**Document 13**) and attachment (**Document 14**)
- Ares(2021)1601454 ISG comments 04.12.2020 (**Document 15**)
- Ares(2021)1601585 ISG comments 09.12.2020 (**Document 16**)
- Ares(2021)1601698: ISG comments 15.02.2021 (**Document 17**) and attachment (**Document 18**)
- Ares(2021)1601779 ISG comments 12.02.2021 (**Document 19**) and attachment (**Document 20**)
- Ares(2021)1601831 ISG comments 24.12.2020 (**Document 21**)
- Ares(2021)1601907 ISG comments 15.02.2021 (**Document 22**)
- Ares(2021)1601975 ISG comments 15.02.2021 (**Document 23**) and attachment (**Document 24**)
- Ares(2021)1602079 ISG comments 21.12.2020 (**Document 25**)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001 we regret to inform you that access is denied to Documents 1 - 25 as disclosure is prevented by the exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of commercial interests

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.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Parts of Documents 4 - 8 contain sensitive business information relating to business strategies and other commercial interests of the companies concerned. There is a real and non-hypothetical risk that disclosure of these parts of the documents could undermine and seriously affect the commercial interests of these companies.

(ii) Protection of the decision-making process

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that '[a]ccess to a document, drawn up by an institution for internal use or received by the an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

Documents 1 - 25 contain preliminary views and reflections of the Commission and other actors regarding the revision of the eIDAS regulation. These documents were drawn up by the Commission for internal use and their content is subject to ongoing discussions and deliberations on which a decision has not been taken yet. The Commission services must be free to explore all possible options in the process prior to launching formal legislative proposals. The risk of disclosing sensitive information regarding the Commission services' views would deter them from freely expressing their opinions and having frank, internal discussions in the preparatory stages of proposing new legislation. Speculations and misinterpretations of the public on the views and reflections put forward in an early stage of the decision-making process would affect the exploration of different policy options and unduly restrict the Commission's internal space to think which is necessary when preparing new legislation. Therefore, disclosure of Documents 1 – 25 would seriously undermine the ongoing decision-making process. The risk that disclosure would undermine the ongoing decision-making process is also reasonably foreseeable and not purely hypothetical.

We have considered whether partial access could be granted to these documents. However, partial access is not possible considering that the documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

4. OVERRIDING INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) and Article 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the

disclosure of the aforementioned parts of the documents but we have not been able to identify such an interest.

5. CONFIRMATORY APPLICATION

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

Yours sincerely,

(Electronically signed)

Roberto Viola