



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels, 14/12/2021
CNECT.R.4

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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your request for access to documents – GestDem 2021/6153

Dear Ms Hirst,

We refer to your e-mail of 14 October 2021 in which you make a request for public 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'), registered on 15 October 2021 under the above-mentioned reference number. We also refer to our holding reply, dated 9 November 2021, our reference Ares(2021)6874747, 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. The aforementioned holding reply was sent to you once more on 22 November, our reference Ares(2021)7166497.

1. SCOPE OF YOUR APPLICATION

By your application you request access to the following:

‘All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2021-09-29 between Filomena Chirico and Facebook Ireland Limited.

In consideration of the environment and the current circumstances with the COVID pandemic I would prefer to receive documents electronically.’

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We identified the following documents as falling within the scope of your request:

- Back to Office Report (BTO) – Meeting between Cabinet Breton and Facebook – 29 September 2021 – Ares(2021)6031328 (**Document 1**)
- Briefing – Facebook Ares(2021)7096029 (**Document 2**)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001 we have arrived at the conclusion that partial access can be granted to the two documents. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of public interest as regards international relations

Article 4(1)(a), third indent of Regulation 1049/2001 provides that the Commission ‘*shall refuse access to a document where disclosure would undermine the protection of the public interest as regards [...] international relations*’.

Parts of Document 1 and Document 2 are covered by the exception to the right of access laid down in Article 4(1)(a), third indent of Regulation 1049/2001, referring to the ‘*protection of the public interest as regards international relations*’. According to settled case-law, ‘*the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, [...] calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation*’¹. In this context, the Court of Justice has acknowledged that the institutions enjoy ‘*a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest*’².

Parts of Document 1 and Document 2 contain sensitive information on several areas pertaining to international relations between the EU, the USA and Russia, which were meant for internal use. There is a real and non-hypothetical risk that public disclosure of these parts would seriously harm the relations of the European Union with third countries, as its content could easily be misinterpreted and misused in a national or international context.

We therefore conclude that access to Document 1 and Document 2 has to be refused for the parts concerned, based on the exception relating to the protection of international relations as laid down in Article 4(1)(a), third indent of Regulation 1049/2001.

(ii) Protection of privacy and integrity of individuals

Full disclosure of Document 1 and Document 2 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- names, functions, and contact information of other natural persons;
- other information relating to an identified or identifiable natural person.

¹ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35

² Judgment in *Council v Sophie in’t Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63

Article 9(1)(b) of the Data Protection Regulation³ does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article of 4(1)(b) Regulation 1049/2001, access cannot be granted to the personal data contained in Document 1 and Document 2, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

(iii) 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 Document 1 and Document 2 are covered by the abovementioned exception as they contain sensitive business information relating to the concerned third party's activities, strategies and views. Disclosure of these parts of the document would seriously affect the third party's relations and positions in the market and would undermine their commercial interests.

Consequently, the above-mentioned parts of Document 1 and Document 2 have been blanked out.

(iv) 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.*'

Parts of Document 1 and Document 2 contain preliminary views and reflections of the Commission services regarding the Digital Services Act package. These parts of the documents were drawn up by the Commission for internal use and their content is subject to ongoing discussions and deliberations in the inter-institutional negotiations on the

³ 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.

Digital Services Act package. The Commission services must be free to explore all possible options in the run-up to ongoing legislative procedures, which are still at an early stage. The risk of disclosing sensitive information regarding the Commission services' preliminary views during the ongoing inter-institutional negotiations on the legislative proposals at question would deter them from freely expressing their opinions and having frank, internal discussions. 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, exposing the Commission to external pressure during the inter-institutional negotiations. The risk of disclosure of these preliminary views and reflections during the ongoing inter-institutional negotiations would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

Consequently, these parts of the Document 1 and Document 2 have been blanked out.

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. REUSE OF DOCUMENTS

You may reuse public documents which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the disclosed parts of Document 1 and Document 2 originating from the Commission free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the Documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that Document 1 and Document 2 were drawn up for internal use under the responsibility of the relevant services. They solely reflect the services' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer. They do not reflect the position of the Commission and cannot be quoted as such.

6. 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

Enclosures: (2)