



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

The Director-General

Brussels  
CNECT.R.4

Lora Verheecke  
9 rue du Bronze  
1070 Brussels  
Belgium

*Advance copy via email:*  
[ask+request-10449-  
7e2baca7@asktheeu.org](mailto:ask+request-10449-7e2baca7@asktheeu.org)

Registered letter with acknowledgement of receipt

**Subject: Your request for access to documents - GestDem 2022/0112**

Dear Ms Verheecke,

We refer to your e-mail of 5 January 2022 with which you introduced a 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'), registered on 7 January 2022 under the above-mentioned reference number. Reference is also made to the holding reply, dated 31 January 2021, whereby you were informed 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 to the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) which was attributed to the Directorate-General for Communications Networks, Content and Technology (DG CONNECT), you request access to the following:

*'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 documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, transcripts, recordings and minutes/notes) relating*

*to the meeting between Filomena Chirico and Delivery Hero on 14th December 2021.'*

## **2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST**

The following documents have been identified as falling within the scope of your request:

- BTO – Meeting DeliveryHero & Cabinet Breton – 14 December 2021 – Ares(2021)7759179 (**Document 1**)
- Email correspondence – Request for a meeting with Commissioner Breton – Ares(2021)6642764 (**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 both documents. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

### *(i) Protection of privacy and integrity of individuals*

Full disclosure of Documents 1 and 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.

Article 9(1)(b) of the Data Protection Regulation<sup>1</sup> 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 4(1)(b) Regulation 1049/2001, access cannot be granted to the personal data contained in the requested documents, 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.

### *(ii) 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

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<sup>1</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.

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 contain sensitive business information relating to business strategies, the competitive situation on the market and other commercial interests of a company, including intellectual property. There is a real and non-hypothetical risk that disclosure of these parts of the document could undermine and seriously affect the commercial interests of this company.

Parts of Document 2 originate from a third party and refer to its activities and business information. After assessment, we have arrived at the conclusion that a disclosure of these parts of Document 2 would adversely affect the commercial interests of the concerned third party.

Consequently, the above-mentioned parts of Documents 1 and 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 which are being withheld 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 Document 1 and the parts of 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 was drawn up for internal use under the responsibility of the relevant services of DG CONNECT. It solely reflects the services' interpretation of the interventions made and does not set out any official position of the third parties to which the document refers. It does 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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

Electronically signed

Roberto Viola

Enclosures: (2)