Registered letter with acknowledgement of receipt

Subject: Your application for access to documents – RefGestDem 2022/3650

Dear Mr Fanta,

We refer to your email dated 22 June 2022 wherein you request access to documents pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation 1049/2001’), registered on 23 June 2022 under the above-mentioned reference number. We also refer to our email dated 14 July 2022, our reference Ares(2022)5141084, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) Regulation 1049/2001.

We apologize for the delay in our response.

1. SCOPE OF YOUR APPLICATION

Your request reads as follows:

‘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 communication with and documents related to said communication with non-profit organisation Thorn since January 1st, 2021. This is meant to include,
but is not limited to, documents related to a series of technical briefings that Thorn set up according to minutes of a meeting with Cabinet Breton on October 18, 2021 (as released under request Ares(2022)3783787’

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified the following documents that fall within the scope of your application:

- Executive Summary Report: Support to increase cooperation among industry, NGOs, and Member States’ authorities for the swift removal of child sexual abuse material online, CNET/LUX/2020/OP/0059 (‘Document 1’)
- Policy paper Thorn, annex to the email of Thorn of 16 May 2022 (‘Document 2’)
- Policy Papers ‘Fighting Child Sexual Abuse in the EU’, annex to the email of 20 October 2021 (‘Document 3’)
- Feedback on Requirements for Artificial Intelligence, Thorn (‘Document 4’)
- Policy Paper ‘Hash Matching’, annex to the email of Thorn of 1 April 2022 (‘Document 5’)
- Back to Office (BTO) Commission meeting with Thorn on CSAM, 14 April 2021 (‘Document 6’)
- Back to Office (BTO) Commission meeting with Thorn on CSAM, 30 June 2021 (‘Document 7’)
- Email CONNECT-Thorn concerning Meeting Request: AI’s Impact on the Fight Against Child Sexual Abuse Material, 21 September 2021 (‘Document 8’)
- Back to Office (BTO) Meeting with Thorn, 23 September 2021 (‘Document 9’)
- Email CONNECT-Thorn concerning the meeting on the fight against CSAM, 17 March 2022 (‘Document 10’)
- Back to Office (BTO) meeting with Thorn, 28 March 2022 (‘Document 11’)
- Email follow up, 1 April 2022 (‘Document 12’)
- Policy Paper ‘Image Classifier’, annex to the email of Thorn of 1 April 2022 (‘Document 13’)
- Policy Paper ‘Grooming Classifier’, annex to the email of Thorn of 1 April 2022 (‘Document 14’)
- Email on EU Legislative Proposal to Combat Child Sexual Abuse, 16 May 2022 (‘Document 15’)
- Email on Thorn meeting – COM additional contacts, 20 October 2022 (‘Document 16’)
- Back to Office (BTO) of online meeting with Thorn, 10 November 2021 (‘Document 17’)
- Email on Report CNET/LUX/2020/OP/0059, 28 June 2022 (‘Document 18’)
- Final Report ‘Support to increase cooperation among industry, NGOs and Member States’ authorities for the swift removal of child sexual abuse material (‘Document 19’)
- Policy Paper ‘False Positive Mitigation’, annex to the email of Thorn of 1 April 2022 (‘Document 20’)

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 full access can be granted for 5 documents. Partial access can be granted for 13 documents and access is refused for 2
documents as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Full disclosure

Documents 1-5 are fully disclosed. Please note that Document 1 is publicly available via the following link:

Support to increase cooperation among industry, NGOs, and Member States' authorities for the swift removal of child sexual abuse material online - Publications Office of the EU (europa.eu)

B. Partial disclosure

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 6-12 and 15-18 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:

- Names, functions and contact details of Commission staff members not pertaining to the senior management;
- Names, functions, contact details of other natural persons.

Article 9(1)(b) of the Data Protection Regulation\(^1\) 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, we 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 interest

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.

Please note that Documents 12-18 originate from a third party that has been consulted. The author has objected to the disclosure of certain parts of Documents 12-18 as they contain information relating to the concerned third party’s activities, views, positions and other commercial interests, including intellectual property. 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 the organisation concerned.

Consequently, the above-mentioned parts of Documents 12-18 have been blanked out.

(iii) 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 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.’

Part of Document 11 contains information with regard to the ongoing initiative and procedures relating to the Artificial Intelligence Act. This content is subject to ongoing discussions and deliberations. The Commission services must be free to explore all possible options with regard to the ongoing initiatives and procedures. The risk of disclosing sensitive information regarding the Commission services’ views and procedures while the relevant decision-making process is still ongoing would deter them from freely expressing their opinions and having frank, internal discussions.

Disclosure of this part would seriously undermine the protection of the ongoing decision-making process. Therefore, the exception laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001 applies.

Consequently, the above-mentioned part of Document 11 has been blanked out.

C. NON-DISCLOSURE

We regret to inform you that access to Documents 19 and 20 cannot be granted.

Disclosure of the documents is prevented by the exception concerning protection of commercial interest of a natural or legal person, including intellectual property, outlined in Article 4(2) first incident of Regulation 1049/2001, for reasons set out in Section B(ii).

Documents 19 and 20 contain sensitive information related to the third parties’ activities, views and positions. Taking into account the view of the third parties who contributed to the texts, there is a real and non-hypothetical risk that disclosure of these documents would undermine and seriously affect the commercial interests of these third parties.

Document 19 also contains personal data and access to those parts of Document 19 is refused based on Article 4(1)(b) Regulation 1049/2001 and for the reasons set out in Section B(i) above, 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.
We have considered whether partial access could be granted to the documents to which access is refused. However, partial access is not possible considering that these documents are covered in their entirety by the abovementioned exception of Article 4 of Regulation 1049/2001.

In light of the foregoing considerations, access to Documents 19 and 20 must be refused completely.

4. **OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Articles 4(2) and 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 these 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 has 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 Documents 1, 6, 7, 9, 11, 17 and parts of Documents 8, 10, 16, 18 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 Documents 6, 7, 9, 11, 17 were drawn up for internal use under the responsibility of the relevant services of DG CONNECT. They solely reflect the services’ interpretation of the interventions made and do not set out any official position of the third party to which the documents refer. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 2-5, 12-15 and parts of Documents 8, 10, 16, 18 originate from a third party. Please note that they are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

6. **CONFIRMATORY APPLICATION**

In accordance with Article 7(2) of Regulation 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 faithfully,

Electronically signed

Roberto Viola

Enclosures: (18)