Subject: Your application for access to documents - GestDem 2022/5491

Dear Ms Lauber,

We refer to your email of 21 September 2022 in which you make 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 22 September under the abovementioned reference number. We also refer to our message dated 13 October 2022 (our reference Ares(2022)7083135) 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 documents:

*(A) The version of the AVMSD impact assessment that was submitted to the RSB in March 2016 (the fair solution proposal indicated that a search had identified this document).*

*(B) Minutes and agendas of all meetings between DG CONNECT and external stakeholders regarding the AVMSD revision, between February 2015 & June 2016 (this was not mentioned in the fair solution proposal).*
(C) Any correspondence, meeting agendas and minutes held by DG CONNECT which involve DG SecGen and mention the AVMSD revision, dated between May 2015 & May 2016 (this was not mentioned in the fair solution proposal).

For (A), please can you let me know why this was not released as part of your response to GestDem 2022/3715; and for (B) and (C), please can you clarify if any documents within scope were identified? I am aware that your team is operating with limited capacity and would like to agree a compromise that poses as little additional burden as possible. (B) and (C) could be narrowed down significantly, for instance - our research project is particularly interested in alcohol and HFSS food advertising within the AVMSD so documents could be limited to those containing relevant information on the commercial communications provisions.’

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Resubmitted version of the draft Impact Assessment on the Directive of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Ares(2016)1656160) (Document 1);
- Minutes of a meeting between DG CONNECT and RTL held on 11 June 2015 (Document 2);
- Minutes of a meeting between DG CONNECT and RTL Group/EGTA held on 17 May 2016 (Document 3);
- Minutes of a meeting with Bonnier Broadcasting held on 10 May 2016 (Document 4).

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 identified documents. Full disclosure of the documents is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001. A part of Document 2 has also been redacted as falling outside the scope of the request.

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 2 – 4 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;
- the names and functions 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) of the Regulation 1049/2001, access cannot be granted to the personal data contained in the identified 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 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 1 - 4 contain sensitive business information relating to business strategies, the competitive situation on the market and other commercial interests of companies, 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 companies at question.

Consequently, the above-mentioned parts of Documents 1 - 4 have been blanked out.

4. **OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4 (2) and (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 relevant non-disclosed parts of Documents 1 – 4, but we have not been able to identify such an interest.

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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 the Commission documents. You may reuse Documents 1 - 4 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 is a draft, which does not reflect the position of the Commission and cannot be quoted as such.

Please note that Documents 2 - 4 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 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 faithfully,

Electronically signed

Roberto Viola

Enclosures: (4)