Subject: Your application for access to documents EASE 2023/2905

Dear Mr Pollet,

We refer to your request for access to documents of 16 May 2023 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 under the abovementioned reference number. We also refer to our holding reply, dated 8 June 2023, our reference Ares(2023)3972790, 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

Your application reads as follows:

‘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:

Thierry Breton and TIM on 27/02/2023
Thierry Breton and Telefonica on 27/02/2023
Thierry Breton and Deutsche Telekom on 27/02/2023
Thierry Breton and Orange on 27/02/2023
Thierry Breton and Vodafone on 27/02/2023

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË – Tel. +32 22991111
CNECT-PUBLIC-ACCESS-TO-DOCUMENTS@ec.europa.eu
Thierry Breton and Telefonica on 10/02/2023
Thierry Breton and Orange, Deutsche Telekom, Telefonica, GSMA Europe, Vodafone, TIM, Teleanor on 10/10/2022
Thierry Breton and TIM on 22/09/2022
Thierry Breton and Telefonica on 20/09/2022
Eleonora Ocello, Valere Moutarlier and Vodafone on 07/03/2023
Eleonora Ocella, Lucia Caudet and Vodafone on 27/02/2023
Lucia Caudet, Eleonora Ocella and TIM on 27/02/2023
Lucia Caudet, Eleonora Ocella and Orange on 27/02/2023
Lucia Caudet, Eleonora Ocella and Deutsche Telekom on 27/02/2023
Lucia Caudet, Eleonora Ocella and Telefonica on 27/02/2023
Eleonora Ocello and Telefonica on 10/02/2023
Eleonora Ocello and Bouygues on 08/02/2023
Eleonora Ocello and Telefonica on 06/02/2023
Eleonora Ocello and GSMA Europe on 26/01/2023
Filomena Chirico and Orange, Deutsche Telekom, Telefonica, GSMA Europe, Vodafone, TIM and Telenor on 10/10/2022
Filomena Chirico and GSMA Europe on 22/09/2022
Filomena Chirico and TIM on 22/09/2022
Filomena Chirico and Telefonica on 20/09/2022
Filomena Chirico and TIM on 13/09/2022
Filomena Chirico and Deutsche Telekom on 29/06/2022
Filomena Chirico and Bouygues on 13/06/2022
Filomena Chirico and Telefonica on 17/05/2022
Agnieszka Skonieczna and Bouygues on 02/03/2022
Filomena Chirico and Orange on 13/012/2022

On those meetings, I am requesting the following documents:

- All minutes, agendas, summary, memos and any other reports of these meetings, issued both in preparation and after the meetings took place.
- All correspondence including attachments (including, but not limited to any emails, correspondence or telephone call notes) and follow-ups, between any Directorates General/the cabinet, Commissioner Breton and the companies/organizations or any intermediaries representing their interests.
- All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) and followups, between any Directorate Generals, the cabinet and Commissioner Breton about those meetings, issued both prior and after.
- All documents prepared for the meetings and exchanged in the course of the meetings between both parties.’

Given the wide-scope of your request, we contacted you on 5 June 2023 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001 (our reference, Ares(2023)3872255). We indicated the steps that the handling of your application would entail, and we concluded that according to our estimates a maximum of 10 meetings could possibly be dealt with within 30 working days counting from the date of registration of your application.

By your email dated 15 June 2023, you narrowed down the scope of your request to the following meetings:

‘- Thierry Breton and TIM on on 27/02/2023
- Thierry Breton and Telefonica on 27/02/2023
- Thierry Breton and Deutsche Telekom on 27/02/2023
- Thierry Breton and Orange on 27/02/2023
- Thierry Breton and Vodafone on 27/02/2023
- Thierry Breton and Telefonica on 10/02/2023
- Thierry Breton and Orange, Deutsche Telekom, Telefonica, GSMA Europe, Vodafone, TIM, Teleanor on 10/10/2022
- Thierry Breton and TIM on 22/09/2022
- Thierry Breton and Telefonica on 20/09/2022

We have therefore restricted the scope of your request to the abovementioned meetings in line with your email dated 15 June 2023.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Briefing for the meetings held on 27/2/2023 (Ares(2023)1734427) (Document 1)
- Readout from meetings held on 27/2/2023 (Ares(2023)3602328) (Document 2)
- Briefing for the meeting with Telefonica held on 10/2/2023 (Ares(2023)2388147) (Document 3)
- Readout from the meeting with Telefonica held on 10/2/2023 (Ares(2023)1112586) (Document 4)
- Briefing for the meeting with GSMA et al. held on 10/10/2022 (Ares(2022)7288955) (Document 5)
- Back-to-office report (BTO) of the meeting with GSMA et al. held on 10/10/2022 (Ares(2022)7623031) (Document 6)
- Email exchange of October/November 2022, Thank you for the meeting on 10/10/2022/ Invitation to MWC- Barcelona 27/02/2023 - 02/03/2023 (Ares(2022)7114504) (Document 7)
  - Attachment: MWC Barcelona 2023, 27th February – 2nd March, 2023 Keynote Speaker Invitation (Document 8)
- Briefing for the meeting with TIM held on 22/9/2023 (Ares(2022)6922706) (Document 9)
- Readout TIM 22/09/2022 (Ares(2022)6664728) (Document 10)
- Email of 29 July 2022, Letter_Commissioner_2907 (Ares(2022)5491578) (Document 11)
  - Attachment: Letter_Commissioner_2907-signed.pdf (Document 12)
- Briefing for the meeting held with Telefonica 20/09/2022 (Ares(2022)6856934) (Document 13)
- Meeting request, Telefonica 20/09/2023 (Ares(2022)4969927) (Document 14)
- BTO of the meeting with Telefonica held on 20/09/2023 (Ares (2022)6687409) (Document 15)

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 all documents. Full disclosure is prevented by exceptions to the right of access laid down in
Article 4 of Regulation 1049/2001. Please note that parts of Documents 1, 2 and 13 have been also redacted as being outside the scope of the request.

(i) Protection of privacy and integrity of the individual

Disclosure of parts of Documents 1 - 15 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, initials, functions, contact and CV 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, 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 international relations

Article 4(1)(a), third indent of Regulation 1049/2001 stipulates that access to a document shall be refused where disclosure would undermine the protection of the public interests 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 [...] requires a margin of appreciation" for the institution\(^2\). 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"\(^3\). The identified documents are covered by the abovementioned exception of Regulation 1049/2001.

Parts of Documents 3 and 5 relate to the international dimensions of telecommunication policy. There is a concrete risk that the public disclosure of these parts would affect the mutual trust between the EU and the concerned international actors and thus undermine their relations. As the Court recognised in Case T-301/10 in’t Veld v Commission, “[…]

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\(^2\) See Judgment in Sison v Council, C-266/05 P, EU:C:2007:75, paragraph 35

\(^3\) Judgment in Council v Sophie in’t Veld, C-350/12 P, EU:C:2014:2039, paragraph 63.
establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise.” Consequently, access to these parts is refused as there is a real and non-hypothetical risk that their disclosure would undermine the public interest as regards international relations.

(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 Documents 1, 3, 5, 6, 9, 10, 13, 14 and 15 are covered by the abovementioned exception as they contain confidential and business sensitive information relating to the concerned third parties’ activities, positions, strategies and views. Disclosure of these parts of the documents would seriously affect the third parties’ relations and position in the market and would undermine their commercial interests. Therefore, we have blanked out the relevant parts of these documents as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

(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.’

The second subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘[a]ccess to a document, containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken 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 Documents 1, 5, 9 and 13 are covered by the abovementioned exception of the first subparagraph of Article 4(3) since they contain sensitive information with regard to ongoing procedures relating to the Gigabit Recommendation, Fair Share, review of the Broadband Cost Reduction Directive (BCRD), the Cyber Resilience Act, the Network and Information Security 2 Directive and the ePrivacy Regulation. They also contain considerations, reflections and views of the Commission services and of other parties. The content of these parts of the documents is subject to ongoing discussions and deliberations.

The Commission services must be free to explore all possible options with regard to ongoing initiatives and policy processes. The risk of disclosing sensitive information regarding the Commission services’ preliminary views while the decision-making process

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on the issue at question is still ongoing would deter them from freely expressing their opinions and having frank, internal discussions. Speculations and misinterpretations of the public on the views, positions, considerations 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. Disclosure of these parts of Documents 1, 5, 9 and 13 would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

4. OVERIDING PUBLIC 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 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 the Commission documents. You may reuse Documents 1 - 6, 9, 10, 13 and 15 and parts of Documents 7 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 1, 3, 5, 6, 9, 13 and 15 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, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 8, 11, 12 and 14 and parts of Documents 7 originate from third parties. 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 confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission by asking for a review via your portal[1] account (available only for initial requests submitted via the portal account),

or via 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: (16)