Subject: Your access to documents request – EASE 2023/3057

Dear Mr Vranken,

We refer to your email in which you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation 1049/2001’), which was registered on 25 May 2023 under the above-mentioned reference number. We also refer to our email, dated 16 June 2023, our reference Ares(2023)4193650, 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.

1. **Scope of Your Application**

Your application reads as follows:

‘- All documents -including but not limited to e-mails, reports, minutes, etc. - related to between stakeholders (including companies, think tanks, consultancy firms, trade and industry associations, etc.) and units CNECT.A.1, CNECT.A.2 and CNECT.ADV02 at DG Connect discussing the Artificial Intelligence Act.  
- All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between stakeholders (including companies, think tanks, consultancy firms, trade and industry associations, etc.) and units CNECT.A.1, CNECT.A.2 and CNECT.ADV02 at DG Connect discussing the Artificial Intelligence Act.  
The request covers the period from 01/01/23.’

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË – Tel. +32 22991111

CNECT-PUBLIC-ACCESS-TO-DOCUMENTS@ec.europa.eu
We consider your request to cover documents held up to the date of your initial application, i.e. 25 May 2023.

Given the wide-scope of your request, we contacted you on 29 June 2023 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001, our reference (Ares (2023)4513705. In order to help you narrow down the scope of the request, we informed you that at that stage approximately more than 250 documents had been identified. We provided you with the relevant categories of documents, the approximate number of documents per category and with examples of stakeholders that fall within the scope of your application. We indicated the steps that the handling of your application would entail and we concluded that according to our estimates a maximum of 15 documents could possibly be dealt with within 30 working days counting from the date of registration of your application.

By your email of 3 July 2023, our reference Ares(2023)4622936, you upheld that the scope of your application is already very restricted and reiterated the text of the initial request. In the aforementioned reply, you specified that the request should only cover documents and correspondence with external stakeholders. Nonetheless, the primary interpretation of the request in question was already limited to external stakeholders.

In line with the principles of sound financial management and good administration to which the Commission is bound to, pursuant to Article 310(5) of the Treaty on the functioning of the European Union, we are obliged to balance your interest in access against the workload resulting from the processing of your application. This is in line with the case law of the EU courts.

We have therefore, as announced in our letter of 29 June 2023 and taking into account the breakdown of documents provided therein, proceeded with a unilateral restriction of the scope of your application. It is what could be achieved, taking into account the Commission’s resources and the global workload of the concerned staff during the same period, within the given timeframe.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Email, Request for meeting: Amnesty International’s work on the AI Act, dated 5 April 2023, Ares(2023)3146482, (‘Document 1’);
- Back to office report (BTO) meeting DG CONNECT with Amnesty International on 27 April 2023, Ares(2023)3946719, (‘Document 2’);
- Email, Your request for a meeting to Lucilla Sioli on AI act – Discussion with civil society - April 2023, dated 8 March 2023, Ares(2023)1950641, (‘Document 3’);
- Email, Invitation to join a panel discussion on ‘Policy considerations for foundational models’ at the Data Science & Law Forum 5.0, dated 27 March 2023, Ares(2023)3132419, (‘Document 4’);
- Email, Replacement Lucilla Sioli at the opening session of AI and Work, Innovation, Productivity and Skills (AI-WIPS), dated 24 March 2023, Ares(2023)2171195, (‘Document 5’);
- Email, Proposal to Lucilla Sioli – meeting with AI and ITI, dated 8 March 2023, Ares(2023)1748798, (‘Document 6’);

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 fourteen documents and access must be refused to one document as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Partial disclosure

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 1-14 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 and contact details of Commission staff members not pertaining to the senior management;
- Names, functions and contact details of other natural persons.

Article 9(1)(b) of the Data Protection Regulation² 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

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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 the public interest as regards international relations

Full disclosure of Documents 7-10 is prevented by the exception concerning the protection of the public interest as regards international relations outlined in Article 4(1)(a) third indent of Regulation 1049/200.

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. 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".

Parts of Documents 7-10 relate to the negotiation and preparation of the Artificial Intelligence Act. There is concrete risk that the public disclosure parts of these documents would affect the mutual trust between the EU, Spain and other international organizations, and thus undermine their relations. As the Court recognised in Case T-301/10 in’t Veld v Commission, “[…] establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise”. Consequently, access has to be refused as there is a real and non-hypothetical risk that their disclosure would undermine the public interest as regards international relations.

Consequently, the above-mentioned parts of Documents 7-10 have been blanked out.

(iii) 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.

Parts of Documents 8-14 contain sensitive information related to the third parties’ activities, views, positions, business strategies and other commercial interests, including

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3 See Judgment in Sison v Council, C-266/05 P, EU:C:2007:75, paragraph 35
intellectual property. There is a real and non-hypothetical risk that disclosure of these parts of the above-mentioned documents could undermine and seriously affect the commercial interests of the companies at question.

Consequently, the above-mentioned parts of Documents 8-14 have been blanked out.

(iv) Protection of the ongoing 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.’

Parts of Documents 1, 2, 7-10 and 12-14 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 Artificial Intelligence Act. They also contain considerations, reflections and views of the Commission services and of other parties. The content of these 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 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 documents would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

Consequently, the above-mentioned parts of Documents 1, 2, 7-10 and 12-14 have been blanked out.

B. Non-disclosure

We regret to inform you that access to Document 15 cannot be granted as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of commercial interest

Disclosure of Document 15 is prevented by the exception of Article 4(2) first indent of Regulation 1049/2001 with regard to the protection of commercial interests of a natural or legal person, including intellectual property, for reasons set out in section 3A(iii).

This document contains business information relating to the third party’s positions, views, strategies and activities. After assessment we have come to the conclusion that its disclosure could undermine the commercial interests of the third party in question.

(ii) Protection of the decision-making process
Disclosure of Document 15 is also prevented by the exception laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001 with regard to the protection of the ongoing decision-making process, for reasons set out in section 3A(iv).

Document 15 contains sensitive information with regard to the ongoing procedures relating to the Artificial Intelligence Act. It also contains considerations, reflections and views of the Commission services and of other parties. The content of this document 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 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 this document would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

Moreover, parts of Document 15 contain personal data, in particular the names, functions, and contact details of Commission staff members not pertaining to the senior management and names, functions, and contact details of other natural persons, thus their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section 3A(i).

Therefore, access to this document cannot be granted as its disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(b), first indent of Article 4(2), and first subparagraph of Article 4(3) of Regulation 1049/2001.

We have considered whether partial access could be granted to these documents. However, partial access is not possible considering that these documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

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 the aforementioned 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 the Commission documents. You may reuse Documents 2, 7-14 and parts of Documents 1 and 3-6 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.

Parts of Documents 1 and 3-6 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 intellectual property rights on them. The European Commission does not assume any responsibility from their reuse.

Please note that Documents 2, 7-14 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.

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 by asking for a review via your portal 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

Enclosure: (15)

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6 https://www.ec.europa.eu/transparency/documents-request