Subject: Your application for access to documents – EASE 2023/3362

Dear Mr Pollet,

We refer to your request for access to documents of 13 June 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 5 July 2023, our reference Ares(2023)4672556, 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:

- Breton and CEOs from ETNO on 06/06/2023

On this meeting, 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.

Email: ask+request-13134-50a92822@asktheeu.org
- All correspondence including attachments (including, but not limited to any emails, correspondence or telephone call notes) and followups, 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.’

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- 20230606 Meeting Commissioner Breton and ETNO CEOs (Ares(2023)4681960) (Document 1)
- Email exchange of May 2023, ‘FW: Meeting Request - Telecom CEOs - 6.6.23 (Ares(2023)3264332) (Document 2)
- Email exchange of June 2023, ‘FW: Thank you & follow-up proposal’ (Ares(2023)4083065) (Document 3)
- Briefing for the meeting held on 6 June 2023 (Ares(2023)4198954) (Document 4)
- Briefing on 5G security for the meeting held on 6 June 2023 (Document 5)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001 and taking into account the opinion of the third party, we have arrived at the conclusion that full access can be given to one document, whilst partial access can be granted to two documents and access is refused for two documents. Full and partial disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Full Access

Document 1 can be fully disclosed.

B. Partial access

Protection of privacy and integrity of the individual

Disclosure of parts of Documents 2 and 3 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.

C. Non-disclosure

We regret to inform you that access to Documents 4 and 5 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 the public interest as regards public security

Article 4(1)(a), first indent of Regulation 1049/2001 stipulates that access to a document shall be refused where disclosure would undermine the protection of the public interest as regards public security.

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".\(^3\)

Document 5 contains sensitive information from a public security perspective, as it concerns the implementation of the 5G toolbox. Disclosure of this information would undermine the 5G security considerations and would therefore have negative consequences on the implementation of the 5G toolbox. Based on the foregoing there is a real and non-hypothetical risk, that disclosure of this document would undermine the protection of public interest, as regards public security.

(ii) 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

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

if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’

Document 4 is covered by the abovementioned exception of the first subparagraph of Article 4(3) since it contains sensitive information with regard to the consultation on the future of the electronic communications sector and other relevant ongoing discussions. It also contains considerations, reflections and views of the Commission services and of other parties. The content of these parts of the document is subject to ongoing discussions and deliberations.

Also Document 5 is covered by the abovementioned exception of the first subparagraph of Article 4(3) since it contains sensitive information with regard to ongoing procedures relating to the implementation of the 5G toolbox. 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, policy processes and implementation of legislation. 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 during 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 Documents 4 and 5 would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

(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.

Document 4 is covered by the abovementioned exception as it contains confidential and business sensitive information relating to the concerned third parties’ activities, positions, strategies and views. Disclosure of these parts of the document 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 this document 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.

Moreover, parts of Documents 4 and 5 contain personal data, in particular the names of Commission staff members not pertaining to the senior management, thus their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section 3B(i).
We have considered whether partial access could be granted to Documents 4 and 5. 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 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 Document 1, and the parts of Document 3 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. It solely reflects the services’ interpretation of the interventions made and do not set out any official position of the third parties to which the document refer, which were not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

Document 2 and parts of Document 3 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: (3)