



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels, 29 September 2023
CNECT.R.4

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Subject: Your application for access to documents – EASE 2023/3438

Dear Mr Henning,

We refer to your request for access to documents of 16 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.

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:

All minutes, agendas, summaries, notes or memos issued before or after; documents prepared for, issued in preparation for, or exchanged during; as well as all correspondence including attachments by either of the meeting parties related to the 24.05.2023 meeting between Google and Commissioner Breton. (...)’

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Email from Google of 5 June 2023 (Ares(2023)3865016) (**Document 1**)
 - o Attachment: Letter of 5 June 2023 (Ares(2023)3865016) (**Document 2**)
- Back-to-Office report of meeting held with Google on 24 May 2023 (Ares(2023)3624816) (**Document 3**)
- Briefing for the meeting held with Google on 24 May 2023 (Ares(2023)3850473) (**Document 4**)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001 and after having consulted the relevant third party, 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 and 3 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 - 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:

- 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 Regulation¹ 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.

¹Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

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 institution². 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 Document 4 relate to the work of the Trade and Technology Council and to the discussions on disinformation on Ukraine. There is a concrete risk that the public disclosure of this part would affect international relations according to Article 4(1)(a), third indent of Regulation 1049/2001. 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*"⁴. Consequently, access to this part 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.

(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 Document 4 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 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 these 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.

(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.'

Parts of Documents 4 are covered by the abovementioned exception of the first subparagraph of Article 4(3) since they contain sensitive information with regard to

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.

⁴ Judgment in *Sophie in't Veld v Commission T-301/10*, EU:T:2013:135, paragraph 126.

ongoing procedures relating to the Artificial Intelligence Act, the consultation on the future of the electronic communications sector and its infrastructure, the implementation of the Digital Markets Act and the Digital Services Act, the Data Act, the implementation of the Code of Practice on Disinformation and the Trade and Technology Council. 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, policy processes and implementation of legislation. The risk of disclosing sensitive information regarding the Commission services' preliminary views while the decision-making processes on the issues 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 processes 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 4 would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical

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 Documents 3 and 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 Documents 3 and 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, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 1 and 2 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 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)

^[1] <https://www.ec.europa.eu/transparency/documents-request>