Subject: Your application for access to documents – EASE 2023/4698

Dear Mr. Henning,

We refer to your email of 4 August 2023 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 7 August 2023 under the above-mentioned reference number. We also refer to our email, dated 29 August 2023, our reference Ares(2023)5876843, 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 in our response.

1. **Scope of your application**

Your application reads as follows:

‘Dear Internal Market, Industry, Entrepreneurship and SMEs,

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 13.07.2023 meeting between Cabinet members of Commissioner Breton and Make.org
- the 18.07.2023 meeting between Cabinet members of Commissioner Breton and Stability AI.

[...]”

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Snapshot Stability AI, Ares(2023)4300407, (‘Document 1’);
- Email, Meeting request from Stability AI, dated 21 June, Ares(2023)4303419, (‘Document 2’);
- Letter Stability AI, attachment to the email of 21 June, Ares(2023)4300407, (‘Document 3’);
- Back to Office Report (BTO), meeting with Stability AI on 19 July 2023, Ares(2023)6013644, (‘Document 4’);
- Email, Proposition de RDV, dated 21 June, Ares(2023)4303486, (‘Document 5’);
- Back to Office Report (BTO), meeting Make.org 13 July 2023, Ares(2023)5162377, (‘Document 6’);
- Presentation EurHope, attachment to the email of 21 June, Ares(2023)4303486, (‘Document 7’).

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 full access can be granted to one document and partial access can be granted to six documents as their full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Full disclosure

Full access can be granted to Document 1. Please find it enclosed to this letter.

B. Partial disclosure

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 2-7 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 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) 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 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 Document 7 contain sensitive information related to the third parties’ activities, views, positions and business strategies. 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 have been blanked out as their disclosure is prevented by the exception of Article 4(2) first indent of Regulation 1049/2001.

(iii) **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 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.’

Part of Document 4 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 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

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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.

Consequently, the above-mentioned part of Document 4 has been blanked out as its disclosure is prevented by the exception of the first subparagraph of Article 4(3) 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 4, 6 and parts of Document 2 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 4 and 6 were drawn up for internal use under the responsibility of the relevant services of DG CONNECT. It solely reflects the service’s interpretation of the interventions made and do not set out any official position of the third parties to which the abovementioned documents refer. They do not reflect the position of the Commission and cannot be quoted as such.

Document 1, 3, 5, 7 and parts of Documents 2 originate from third parties. Please note that it is 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 (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**\(^2\) **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: (8)

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