Subject: Your application for access to documents – EASE 2023/5673

Dear Ms Smailagic,

We refer to your application for public access to documents under Regulation (EC) No 1049/2001, dated 29 September 2023 and registered on the same date under the above EASE reference number.

1. SCOPE OF YOUR REQUEST

In your request, you asked for access as follows:

‘All documents – including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations— related to the meetings on February 1st, 2023, between the Minister of Foreign Relations of Argentina Santiago Cafiero and Vice-President of the European Commission (EC) and High Representative of the EU for External Affairs, Josep Borrell, together with the Executive Vice-President of the EC and Commissioner for EU Trade, Valdis Dombrovskis, and the European Commissioner for International Partnerships, Jutta Urpilainen.’

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2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In relation to your request one document has been identified by DG TRADE:

- Ares(2023)7144428 – Read out of the meeting between ARG Minister Cafiero and EVP Dombrovskis and HRVP Borrell.

Having examined the requested document under the applicable legal framework regarding public access to documents, I am pleased to grant you partial access to the document referred to above.

In this document names and other personal data have been redacted pursuant to Article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 2018/1725. Hence, the main content of this document relevant to your request is accessible.

In addition to personal data, certain additional elements required redaction, as this additional information is covered by the exceptions under Article 4(1)(a), third indent (protection of the public interests as regards international relations).

The reasons justifying the application of the two exceptions referred to above are set out below.

2.1. PROTECTION OF THE PRIVACY AND INTEGRITY OF THE INDIVIDUAL

With regard to the document referred to above, a partial release is granted, but a complete disclosure of the identified document is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, because they contain the following personal data:

- the names-initials and contact information of Commission staff members not pertaining to the senior management; and
- the names-initials and contact details of other natural persons.

Under Article 4(1)(b) of Regulation 1049/2001, access to a document has to be refused, if its disclosure would undermine the protection of 'privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data'.

The currently applicable legislation regarding the protection of personal data is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 20182 ("Regulation 2018/1725").

Article 3(1) of Regulation 2018/1725 states that personal data 'means any information relating to an identified or identifiable natural person [...]'). The Court of Justice has indicated that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.3 Names, signatures, functions,


3 See judgment in Nowak, C-434/16, EU:T:2018:560, points 33 to 35.
telephone numbers and/or initials pertaining to staff members of an institution are thus to be considered personal data.4

Article 9(1)(b) of Regulation 2018/1725 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) of Regulation 1049/2001, access cannot be granted to the personal data contained in the document, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and as 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.

2.2. PROTECTION OF INTERNATIONAL RELATIONS

Article 4(1)(a), third indent of Regulation 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: the public interest 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 1049/2001, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation’5. 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’6.

The General Court found that ‘it is possible that the disclosure of European Union positions in international negotiations could damage the protection of the public interest as regards international relations’ and ‘have a negative effect on the negotiating position of the European Union’ as well as ‘reveal, indirectly, those of other parties to the negotiations’7. Moreover, ‘the positions taken by the Union are, by definition, subject to change depending on the course of those negotiations and on concessions and compromises made in that context by the various stakeholders. The formulation of negotiating positions may involve a number of tactical considerations on the part of the negotiators, including the Union itself. In that context, it cannot be precluded that

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4 Judgment in Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission, T-39/17, EU:T:2018:560, points 43 and 44.
5 Judgment in Sison v Council, C-266/05 P, EU:C:2007:75, paragraph 35.
disclosure by the Union, to the public, of its own negotiating positions, when the negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating capacity of the Union".

We consider that the confidentiality of a part of the requested document is fully protected by a coherent application of the third indent of Article 4(1)(a) and that access to this part of the requested document has therefore to be refused. Since there are still ongoing negotiations between the EU and Mercosur, there is a concrete risk that public disclosure of the redacted elements would not only have a negative effect on the negotiating capacity of the EU but also affect the mutual trust between the EU and Mercosur and thus undermine their relations.

3. DISCLAIMER(S)

Please kindly pay attention to the following: you may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf, based on Commission Decision 2011/833/EU of 12 December 2011 on the re-use of Commission documents. You may reuse the documents disclosed free of charge 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 any liability stemming from the reuse.

Finally, please note that the document were drawn up for internal use under the responsibility of the relevant service of DG TRADE. It solely reflects the service’s interpretation of the interventions made and does 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.

4. POSSIBILITY OF A 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 a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission, either by

• asking for a review via your portal account (available only for initial requests submitted via the portal account), or

• email to sg-acc-doc@ec.europa.eu, or

• letter post to the following address:
  European Commission
  Secretariat-General
  ‘Transparency, Document Management & Access to Documents’ (unit SG C.1)

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8 Id., paragraph 125.
10 https://www.ec.europa.eu/transparency/documents-request
BERL 7/76
Rue de la Loi 200/Wetstraat 200
1049 Brussels
Belgium.

Yours sincerely,

[Signature]

Sabine Weyand
p.p. Denis REDONNET

Enclosures (2):
Annex ‘List of identified documents,’
1 document (1 partially redacted).