Subject: Your application for access to documents - EASE 2023/5207

Dear Sir,

We refer to your email dated 7 September 2023 wherein you submitted a request for access to documents 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’) and registered on the same date under the abovementioned reference number. We also refer to our holding reply, dated 28 September 2023, our reference Ares(2023)6568892, 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:

All documents (e-mails, texts, meeting minutes, etc) relating to a meeting on April 26, 2023 between Eleonora Ocello (Cabinet member of Thierry Breton) and Microsoft [...]”.

By email: ask+request-13382-c12f5a90@asktheeu.org
2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

   Email exchanges of 6 and 7 April 2023 between Microsoft and Cabinet Breton, Ares(2023)2515920 (‘Document 1’)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified document under the provisions of Regulation 1049/2001, we have arrived at the conclusion that partial access can be granted to the document. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of privacy and integrity of the individual

Full disclosure of the document is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, since it contains 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 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 document, 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 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

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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.

Part of the document originates from a third party. Within the statutory timeframe, we could not achieve certainty that the third party concerned would agree to the disclosure of this part. Therefore, following assessment we have come to the conclusion that a disclosure could undermine the commercial interests of the third party. Therefore, we have blanked out the relevant part of the document as its disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

4. **OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(2) 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 document 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 the disclosed document 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 document. Please note that the Commission does not assume liability stemming from the 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. You can submit it in one of the following ways:

**by asking for a review via your portal**

2 **account** (available only for initial requests submitted via the portal account),

**or by mail:**

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076

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B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures: (2)