Subject: Your application for access to documents – EASE 2023/5771

Dear Sir,

We refer to your email dated 3 October 2023 wherein you make 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’), registered on the same date under the abovementioned reference number.

1. SCOPE OF YOUR APPLICATION

Your application reads as follows:

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Dear Communications Networks, Content and Technology,

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 on recent interactions with Meta regarding a plan by the company to introduce a "subscription no ads" plan, as reported on October 3, 2023 by the Wall Street Journal (https://urldefense.com/v3/__https://www.wsj.com/tech/meta-floats-charging-14-a-month-for-ad-free-instagram-or-facebook-5dbaf4d5__;!!DOxrgLBm!ByfWkucAsVbDq1-gC3ELO5o-8XzhrPnObAux8rO_Ot_YHL_mzIogfwdlILRjGYctovqLRGgAwbXGHBuULJfipsgu
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This request is meant to include meeting minutes, e-mails and any other document related to the proposal. [...]

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Email exchange of 7 and 8 September 2023 between Cabinet Breton and Meta (‘Document 1’) and its attachment (‘Document 2’), Ares(2023)6155112

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 access cannot be granted as its disclosure is prevented by the exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of privacy and integrity of individuals

Disclosure of the identified documents 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, 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 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

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

The identified documents are covered by the abovementioned exception since they contain sensitive information with regard to an ongoing regulatory implementation procedure. They also contain considerations, reflections and views of the Commission services and of other parties. The content of these 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 Commission services’ and third parties’ preliminary views while the decision-making process 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 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 these documents would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

4. PARTIAL ACCESS

We have considered whether partial access could be granted to the identified documents. However, partial access is not possible considering that the documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

5. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in 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 documents which are being withheld but we have not been able to identify such an interest.

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),

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(2) [https://www.ec.europa.eu/transparency/documents-request](https://www.ec.europa.eu/transparency/documents-request)
or by mail:

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