Subject: Your request for access to documents – EASE 2023/5812

Dear Mr Fanta,

We refer to your e-mail of 4th of October 2023 in which you make a request for access to documents, registered on the same date under the above-mentioned reference number.

You requested access to:

"Under Regulation 1049/2001, I would like to request all documents related to exchanges with ASML since January 1, 2020. This is meant to include minutes of meetings, position papers, e-mails and any other document”.

Please note that this reply concerns only documents held by the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW); additional documents might be held by other services of the Commission, in particular the Directorate General for Communications Networks, Content and Technology (DG CNECT).

We have identified two documents that fall within the scope of your request, i.e. email from ASML dated 15/07/2021 and minutes of the meeting with AMSL dated 12/12/2022.

Following the examination of the identified documents under the provisions of Regulation (EC) N° 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted with reference to the minutes of the meeting with ASML on 12/12/2022, as their disclosure is prevented by the exception to the right of access laid down in Article 4(2) first indent of the Regulation. The disclosure could infringe the third parties’ commercial interests, including intellectual property and in consequence influence their market position and growth potential.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) N° 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. I have
further examined whether there could be an overriding public interest in their disclosure, but I have not been able to identify such an interest.

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 (EC) N° 1049/2001, because it contains the following personal data:

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

Article 9(1)(b) of the Data Protection Regulation 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 (EC) N° 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.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) N° 1049/2001, following the third parties’ consultations. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released document without the agreement of the originator, who may hold an intellectual property right on it. The European Commission does not assume any responsibility from its reuse.

In accordance with Article 7(2) of Regulation (EC) N° 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

by asking for a review via your portal¹ 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
B-1049 Bruxelles

¹ https://www.ec.europa.eu/transparency/documents-request
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Kerstin JORNA
Director-General
(electronically signed)

Enclosure: 1