Subject: Your application for access to documents-EASE 2023/6685

Dear Madam,

We refer to your email dated 9 November 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 12 November 2023 under the abovementioned reference number. We also refer to our holding reply, dated 4 December 2023, our reference Ares(2023)8262689, 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 relating to the EU-India Trade and Technology Council, first ministerial round, held on May 16th, 2023. The document I'm requesting include but not are limited to:

- briefings, summaries/readouts of meeting of the TTC representatives held on May 16th 2023
- Minutes, reports and summary of the preparatory working group on "Strategic technologies, digital governance and digital connectivity [...]"

Due to the scope of your request, covering also areas falling under the responsibility of other Directorates-General, your request was split between:

a) Directorate–General for Communications Networks, Content and Technology (DG CONNECT), under reference number EASE 2023/6685,
b) Directorate–General for Trade (DG TRADE), under reference number EASE 2023/6905 and
c) Directorate–General for Research and Innovation (DG RTD), under reference number EASE 2023/6940

This letter relates only to the reference number EASE 2023/6685. You will receive separate replies related to EASE 2023/6905 and EASE 2023/6940 from the other respective Directorates-General in due course.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE APPLICATION

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

- EU-India Joint Statement – 1st meeting of the TTC 16 May 2023, Ares(2023)8418273 (‘Document 1’)
- Press release ‘First EU-India Trade and Technology Council focused on deepening strategic engagement on trade and technology’, IP/23/2728(‘Document 2’)
- Note to the COREPER ‘Early notice of intention to issue a Joint Statement at the 1st EU-India TTC’, 5 April 2023, Ares(2023)8423630 (‘Document 3’)
- Note to the COREPER, 12 May 2023, Ares(2023)8391924 (‘Document 4’)
- Briefing, EU-India TTC meeting 16 May 2023, Basis CNECT/10402 (‘Document 5’)
- Briefing, TTC Ministerial, Basis CAB BRETON/2084 (‘Document 6’)
- Briefing, Basis CAB BRETON/2108 (‘Document 7’)
- Briefing, EU-India TTC, Basis SGT-PDT-VPs/29018 (‘Document 8’)
- Report on the 1st Ministerial meeting of the EU-India TTC, 15-16 May 2023, Ares(2023)8393103 (‘Document 9’)

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 two documents. Partial access is granted to one document whilst access is refused to the remaining documents as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Full disclosure

Documents 1-2 can be fully disclosed. Please find Document 1 enclosed to this letter. Document 2 is publicly available via the following link:

B. Partial disclosure – Protection of privacy and integrity of the individual

Full disclosure of Document 3 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 it contains the following personal data:

- Names, functions and contact details of Commission staff members not pertaining to the senior management

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) 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.

C. Non-disclosure

We regret to inform you that access to Documents 4-9 cannot be granted as they are covered by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of international relations

Article 4(1)(a), third indent of Regulation 1049/2001 stipulates that access to a document shall be refused 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 No 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". 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".


Documents 4-9 are covered by the abovementioned exception of Regulation 1049/2001. The documents contain sensitive information with regard to the EU-India Trade and Technology Council. Public disclosure of these documents would affect the mutual trust between the EU and India and undermine their collaborative efforts and initiatives that have been built over the years and thus their relations.

Consequently, access to these documents has to be refused as there is a real and non-hypothetical risk that their disclosure would undermine the public interest as regards international relations.

(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 an 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.’

The second subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘access to a document, containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’

Documents 4-9 are covered by the abovementioned exception as they contain confidential information on procedures in the context of the EU-India Trade and Technology Council. They also contain considerations, reflections and views of the Commission services and positions of other parties. Speculations and misinterpretations of the public on the views, positions, considerations put forward at earlier stages of the procedures would affect the exploration of different options and expose the Commission to external pressure. They would also deter third parties and Commission services and officials from putting forward their views without being unduly influenced by the prospect of wide disclosure and would seriously undermine the Commission’s functioning and internal decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

Consequently, access to these documents should be refused as their disclosure is prevented also by the exceptions of Article 4(3) of Regulation 1049/2001.

(iii) Protection of privacy and integrity of individuals

Parts of these documents are also covered by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, for the reasons set out in Section 3B, since they contain the following personal data:

- Names and contact information of Commission staff members not pertaining to the senior management

- Names, functions and CV details of other natural persons

4. PARTIAL ACCESS

We have considered whether partial access could be granted to the documents to which access is refused. However, no meaningful partial access is possible considering that the
documents concerned are covered in their entirety by the abovementioned exceptions of Regulation 1049/2001.

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 documents 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.

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 (4) 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

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

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures: (3)

(4) https://www.ec.europa.eu/transparency/documents-request