Subject: Your application for access to documents – EASE 2023/6905

Dear Ms Doda,

I refer to your application dated 9 November 2023, in which you make a request for access to documents under Regulation (EC) No 1049/2001 ("Regulation 1049/2001"), registered on 12 November 2023 under the above mentioned reference number. Please accept our apologies for the delay in preparing the reply to your request.

1. SCOPE OF YOUR REQUEST

In your request, you asked for access as follows:

- 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 2023/6985

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b) Directorate-General for Research (DG RTD), under reference number EASE 2023/6940, and

c) Directorate-General for Trade (DG TRADE), under reference number EASE 2023/6905

This letter relates only to the reference number EASE 2023/6905.

In reply to your request 5 documents have been identified:

1) Briefing for the EU-India Trade and Technology Council – BASIS SG-PDT-VPs/29019
2) Report on EU-India Trade and Technology Council (Trade part) - Ares(2023)3578748
3) Report on the Stakeholders’ meeting on trade, investment and Resilient Value Chains (EU – India Trade and Technology Council.) - Ares(2023)3578748
4) EU-India Trade and Technology Council - Briefing for stakeholders’ Event on Working Group 3 on “Trade, Investment and Resilient Value Chains” - Ares(2023)8599504
5) WG3 Stakeholder Discussion on trade, investment and resilient value chains between the EU and India – 15 May 2023 – ARES(2024)776042

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

Having examined the requested documents under the applicable legal framework, I am pleased to grant you full access to document 5 and partial access to documents 1, 2, 3, and 4.

In documents 1, 2, 3 and 4, 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.

In addition, some parts of documents 1 and 2 cannot be released as their disclosure would undermine the protection of the EU’s international relations and the Commission’s decision making. The non-disclosed documents are covered by the exception of Article 4(1)(a), third indent (international relations), and Article 4(3) (Internal decision making) of Regulation 1049/2001.

For details to this regard please see here below.

2.1. Protection of the public interest as regards 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'\(^2\). 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'\(^3\).

Both documents 1 and 2 include contents of sensitive communications with Indian authorities made in a confidential context, as well as elements of the EU’s negotiations strategy with India. The disclosure of these documents would undermine the protection of the public interest as regards international relations, because this information – if disclosed – would risk harming the European Union’s relations with the India and weakening the European Union’s negotiating position by disclosing its negotiation strategy.

In sum, we therefore consider that the confidentiality of the redacted parts of documents 1 and 2 is fully protected by a coherent application of Article 4(1)(a), third indent of Regulation 1049/2001 and that therefore access to these documents has to be refused.

2.2. Protection of privacy and the integrity of the individual – Article 4(1)(b) of Regulation 1049/2001

2.2.1. ‘Personal data’

We disclose the identified documents 1, 2, 3 and 4 only partially, as they contain certain personal data, which must be redacted in accordance with Article 4(1)(b) of Regulation 1049/2001, namely:

- the names-initials and contact information of Commission staff members not pertaining to the senior management;
- the names-initials and/or contact details of other natural persons – other than Commission staff members;
- other information relating to an identified or identifiable natural person.

To this regard Article 4(1)(b) of Regulation 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data'.

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\(^2\) Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, point 35.

The applicable legislation in this field is Regulation (EU) No 2018/1725\(^4\) (hereafter ‘Regulation 2018/1725’ or ‘Data Protection Regulation’).

Article 3(1) of Regulation 2018/1725 provides that personal data means ‘any information relating to an identified or identifiable natural person [...]’. The Court of Justice has specified 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.\(^5\) Please note in this respect that the names, signatures, functions, email addresses, telephone numbers etc., and/or initials pertaining to staff members of an institution are to be considered personal data, as well as those of individuals belonging to third parties. As already indicated above, the documents 2, 3 and 4 contain such personal information.

### 2.2.2. Question of ‘transfer’ of personal data and conclusion

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, 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.

### 2.3. Protection of the Commission’s decision-making process

Article 4(3) of Regulation 1049/2001 provides that ‘Access 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.’.

Document 1 includes sensitive information related to positions of the Commission services views on outbound investment screening. The release of this information would seriously undermine the future decision-making process of the Commission in this field. In addition, it is not considered that the content of the information would justify overriding the exception based on the public interest.

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2.4. Disclaimer(s)

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.

3. 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
- by email to sg-acc-doc@ec.europa.eu, or
- by **letter post** to the following address:
  European Commission
  Secretariat-General
  ‘Transparency, Document Management & Access to Documents’ (unit SG C.1)
  BERL 7/76
  Rue de la Loi 200/Wetstraat 200
  1049 Brussels
  BELGIUM.

Yours sincerely,

[Signature]

Sabine WEYAND
p.p. Maria MARTIN-PRAT

Enclosures (6): List of annexes
5 documents (thereof 4 partially redacted)

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8 https://www.ec.europa.eu/transparency/documents-request