Brussels, 7.3.2024
C(2024) 1663 final
Mr Cian Delaney

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 – EASE 2023/7029

Dear Mr Delaney,

I am writing in reference to your confirmatory application of 22 January 2024, registered on the same day, submitted in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter 'Regulation (EC) No 1049/2001').

Please accept our apologies for the delay in replying to your request.

1. SCOPE OF YOUR REQUEST

In your initial application of 24 November 2023, registered on 27 November 2023 under the reference number Ares(2023)8067779, you request access to ‘All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meetings on February 1st, 2023, between the Minister of Foreign Relations of Argentina Santiago Cafiero and Vice-President of the European Commission (EC) and High Representative of the EU for External Affairs, Josep Borrell, together with the Executive Vice-President of the EC and Commissioner for EU Trade, Valdis Dombrovskis, and the European Commissioner for International Partnerships, Jutta Urpilainen’.

Given the subject matter of your application, the initial request for access to documents was assigned to the Directorate-General for International Partnerships (hereinafter ‘DG INTPA’).

DG INTPA identified the following document falling under the scope of your request:

1) **Ares(2023)7144428** - Read out of the meeting between ARG Minister Cafiero and EVP Dombrovskis and HRVP Borrell.

In its initial reply of 22 January 2024, registered under Ares (2024)469933, DG INTPA noted that a request, with an identical scope, had been previously submitted by your organisation under the case EASE 2023/5673. This request was handled by the Directorate-General for Trade (hereinafter ‘DG TRADE’) which identified the same document (Ares(2023)7144428), to which it granted partial access based on the exceptions laid down in the third indent of Article 4(1)(a), (protection of the public interests as regards international relations) and in Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001. In consideration of the fact that the scope of the request and the identity of the organisation are identical in both cases, DG INTPA replied at initial stage by simply referring to DG TRADE’s decision.

Please note, for your convenience, that the document has been published under the link in the footnote3.

In your confirmatory application registered on 22 January 2024, you contest the applicability of the exceptions laid down in the third indent of Article 4(1)(a), (protection of the public interests as regards international relations) and in Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001. Namely, you argue that, I quote, [I] ‘am not satisfied with my result of request, which concluded that the full information on this documentation is to be withheld. This contradicts my freedom of information entitlements guaranteed by the Aarhus Convention, according to the EU’s own official wording’.

2. **ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply to the initial application, issued by the Commission service responsible.

Following careful examination, the Secretariat-General regrets to inform you that a wider access to the requested document cannot be granted, since the redacted parts are covered by the exceptions laid down in the third indent of Article 4(1)(a), (protection of the public interests as regards international relations) and in Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

Preliminarily, the Secretariat-General notes that the access to documents requests submitted under EASE 2023/5673 and under EASE 2023/7029 have to be considered as sent by the same applicant, intended as a single legal entity. In fact, although the individual applicants of these cases are different, they work in the same organisation and provided the same postal address in their applicant details. Moreover, the fact that the

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phrasing of both requests is identical corroborates the reasoning that this present request 2023/7029 has to be considered repetitive in relation to case EASE 2023/5673.

Please note that, in case of repetitive requests, the consolidated case-law stated that the Commission has to examine whether the (full or partial) refusal of access remains justified in light of new legal or factual circumstances. If the applicant has not invoked any relevant new circumstances the Commission still has to examine if there are any such new circumstances.

In its judgement in case T-186/98 Inpesca v Commission, the General Court stated that ‘[i]f a request for reconsideration of a decision which has become definitive is based on substantial new facts, the institution concerned is required to comply with the request. After reconsidering the decision, the institution must take a new decision, the legality of which may where necessary be challenged before the Community judicature’\(^4\).

This was also confirmed by the Court of Justice in its judgment in case C-362/08 P, Internationaler Hilfsfonds v European Commission, where it stated that ‘(…) a person may make a new demand for access relating to documents to which he has previously been denied access. Such an application requires the institution concerned to examine whether the earlier refusal of access remains justified in the light of a change in the legal or factual situation which has taken place in the meantime’\(^5\).

The Secretariat-General notes that in your confirmatory request you did not put forward any new legal or factual circumstances, nor has the Secretariat-General been able to identify any that might have justified a different outcome than that adopted by the Commission for case EASE 2023/5673.

Moreover, in case your organisation intended to contest the exceptions applied to the identified document in case EASE 2023/5673, it should have submitted a confirmatory application within the statutory deadline in accordance with Article 7(2) of Regulation 1049/2001, namely, within 15 working days upon receipt of the decision.

Since your organisation did not submit such confirmatory application for case EASE 2023/5673 within the prescribed deadline, the decision became definitive, and the case was closed on 1 December 2023.

Consequently, the present confirmatory application cannot constitute a means to challenge the Commission’s decision for case EASE 2023/5673, since the in-depth assessment at this stage of the considerations put forward in your confirmatory application would entail the circumvention of the legal deadlines set out by Regulation (EC) No 1049/2001 and the review of a decision which is definitive.


\(^5\) Judgment of the Court of Justice of 26 January 2010, Internationaler Hilfsfonds v Commission, C-362/08, paragraph 57.
Against this background, in light of the unchanged legal and factual circumstances of the request, the Secretariat-General confirms that the exceptions laid down in the third indent of Article 4(1)(a), (protection of the public interest as regards international relations) and in Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001 still apply to the identified document.

3. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Ilze JUHANSONE
Secretary-General