Subject: Your application for access to documents – EASE 2023/7285

Dear Mr Fanta,

We refer to your request for access to documents of 8 December 2023 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 under the abovementioned reference number. We also refer to our holding reply, dated 9 January 2024, 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 which contain the following information:

- All documents (meeting minutes, briefing notes, e-mails, etc.) regarding the June 23, 2023 meeting between Commissioner Breton and Meta CEO Mark Zuckerberg’

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified the following documents as falling within the scope of your application:
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 one document and partial access can be granted to the remaining document. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001. Please note that parts of Document 2 have been also redacted as being outside the scope of the request since they concern other meetings.

A. Full disclosure

Document 1 can be fully disclosed.

B. Partial disclosure

(i) Protection of privacy and integrity of the individual

Disclosure of parts of Document 2 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, functions and contact details of Commission staff members not pertaining to the senior management;

- Names, initials, functions, contact and CV 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 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.

(ii) Protection of international relations

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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 interests 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 [...] requires a margin of appreciation" for the institution. 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". The identified document is covered by the abovementioned exception of Regulation 1049/2001.

Parts of Document 2 relate to the EU-US Trade and Technology Council and the international dimensions of AI regulation and disinformation. There is a concrete risk that the public disclosure of these parts would affect the mutual trust between the EU and the concerned international actors and thus undermine their relations. As the Court recognised in Case T-301/10 in’t Veld v Commission, “[...] establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise”. Consequently, access to these parts is refused as there is a real and non-hypothetical risk that their disclosure would undermine the public interest as regards international relations.

(iii) Protection of commercial interests

Article 4(2) first indent of Regulation 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Parts of Document 2 are covered by the abovementioned exception as they contain business sensitive information relating to the concerned third parties’ activities, positions, strategies and views. Disclosure of these parts of the documents would seriously affect the third parties’ relations and position in the market and would undermine their commercial interests. Therefore, we have blanked out the relevant parts of this document as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

(iv) 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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2 See Judgment in Sison v Council, C-266/05 P, EU:C:2007:75, paragraph 35
refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’

Parts of Document 2 are covered by the abovementioned exception of the first subparagraph of Article 4(3) since they contain sensitive information with regard to ongoing procedures relating to the implementation of the Digital Services Act, the Digital Markets Act, the Code of Practice on Disinformation and the Artificial Intelligence Act. They also contain considerations, reflections and views of the Commission services and of other parties. The content of these parts of the documents is subject to ongoing discussions and deliberations.

The Commission services must be free to explore all possible options with regard to ongoing initiatives and policy processes. The risk of disclosing sensitive information regarding the Commission services’ preliminary views while the decision-making processes at question are 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 ongoing decision-making processes 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 parts of Document 2 would therefore seriously undermine the ongoing decision-making processes. This risk is also reasonably foreseeable and not purely hypothetical.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) and 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 parts of the document which are being withheld but we have not been able to identify such an interest.

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 Documents 1 and 2 originating from the Commission 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.

Please note that Documents 1 and 2 were drawn up for internal use under the responsibility of the relevant services. They solely reflect the services’ interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.
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 by asking for a review via your portal\(^1\) account (available only for initial requests submitted via the portal account),

or via the following address:

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: (2)

\(^1\) [https://www.ec.europa.eu/transparency/documents-request](https://www.ec.europa.eu/transparency/documents-request)