Subject: Request for access to documents
Ref.: Your request of 19 April 2024 registered under reference EASE 2024/2106.

Dear Mr Fanta,

I refer to your above-referenced requests for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents\(^1\) by which you request access to “Commission Decision on lodging an appeal - C(2024)2480”.

1. ASSESSMENT

In reply to your application, I regret to inform you that access cannot be granted to the requested document since it is covered by the exception provided for under Article 4(2), second indent of Regulation (EC) No 1049/2001 (“protection of court proceedings”), as explained below.

2. PROTECTION OF COURT PROCEEDINGS

Article 4(2), second indent of Regulation (EC) No 1049/2001 states by way of exception that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] court proceedings [...] unless there is an overriding public interest in disclosure”.

The purpose of the exception for the protection of court proceedings is to maintain the independence of the EU institutions in their dealings with the Court and to ensure the proper course of justice.

The document you request is the Commission’s decision on the submission of an appeal before the Court of Justice. This decision was adopted on 19 April 2024.

The Court of Justice has stated in its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P (API judgment) that pleadings lodged in court proceedings are wholly specific since they are inherently part of the judicial activities of the Court and these activities are as such excluded from the scope of the right of access to documents without any distinction being drawn between the various procedural stages in the light of the need to ensure that, throughout the court proceedings, the exchange of arguments by the parties and the deliberations of the Court in the case before it take place in an atmosphere of total serenity\(^2\).

In addition, the Court has recognised the existence of a general presumption under which “disclosure of the pleadings lodged by one of the institutions in court proceedings would

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\(^1\) OJ L 145, 31.05.2001, page 43.

**undermine the protection of those proceedings, for the purposes of the second indent of Article 4(2) of Regulation No 1049/2001, while those proceedings remain pending**.

Although, strictly speaking, the requested document is not part of the pleadings lodged with a court, it is internal document drawn up specifically with a view to lodging an appeal before the Court of Justice and it contains some preliminary legal views on the Commission’s legal position and line of action in the future proceedings.

In this regard, the General Court has stated that documents other than pleadings, whose disclosure is liable in the context of specific proceedings to compromise the equality of arms, are also covered by the exception provided for in Article 4(2), second indent of Regulation (EC) No 1049/2001.

In the light of the above, I consider that document C(2024)2480 is clearly covered by the exception provided for in Article 4(2), second indent of Regulation (EC) No 1049/2001 and cannot be disclosed.

**5. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

Pursuant to Article 4(2) of Regulation (EC) No 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosing the requested document. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4(2), second indent. In the present case, I see no elements capable of showing the existence of an overriding public interest in disclosure of the requested document that would outweigh the public interest in the protection of the ongoing proceedings.

**6. MEANS OF REDRESS**

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below:

European Commission
Secretariat-General
Unit C.1. ‘Transparency, Document Management and Access to Documents’
BERL 7/076
B-1049 Brussels

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

Yours sincerely,

Daniel CALLEJA
p.p. Clemens LADENBURGER

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