



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels
CNECT.R.4

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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your request for access to documents – GestDems 2021/2173

Dear Ms Verheecke,

We refer to your e-mail of 8 April 2021 in which you make requests for public 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 9 April 2021 under the above-mentioned reference number. We also refer to our holding reply, dated 30 April 2021, our reference Ares(2021)2925658, whereby we informed you that the time limit for handling your applications was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001. We apologise for the delay that occurred in the handling of this application.

1. SCOPE OF YOUR APPLICATION

By your application to the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) which was attributed to the Directorate-General for Communications Networks, Content and Technology (DG CONNECT), you request access to the following:

‘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 documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, transcripts, recordings and minutes/notes) relating to the meeting between Filomena Chirico and ITI on 2nd February.’

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- E-Mail exchange regarding a meeting request of ITI with Commissioner Breton Q1 2021 of January 2021 (**Document 1**);
- Back to office report (BTO) of a meeting between ITI and Cabinet Breton held on 2 February 2021 (**Document 2**);
- ITI Comments to the Data Governance Act Proposal (**Document 3**);
- E-mail regarding ITI Submission to the Data Governance Act of 29 January 2021 (**Document 4**);
- ITI letter on Data Governance Act proposal of 29 January 2021 (**Document 5**);
- Minutes of meeting between ITI and Cabinet Breton held on 2 February 2021 (**Document 6**);
- Briefing prepared for a meeting between Cabinet Breton and ITI on 2 February 2021 (**Document 7**).

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001 and taking into account the opinions of the third party we have arrived at the conclusion that partial access can be granted to all identified documents. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 1 – 7 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:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- Names, functions, CV details, handwritten signatures and contact information of other natural persons;
- other information relating to an identified or identifiable natural person.

Article 9(1)(b) of the Data Protection Regulation¹ 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.

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

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

Parts of Document 6 are covered by the exception to the right of access laid down in Article 4(1)(a), third indent of Regulation 1049/2001 which refers to ‘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, [...] 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.

Parts of Document 6 contain sensitive information on areas pertaining to technological sovereignty and relations with third countries, which were meant for internal use. As its content could easily be misinterpreted and misused in a national or international context, there is a real and non-hypothetical risk that public disclosure of these parts would seriously harm the relations of the European Union with third countries.

Consequently, the above-mentioned parts of Document 6 have been blanked out.

(iii) 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 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 7 contain preliminary views and reflections of the Commission services regarding the Digital Services Act package, the Data Governance Act and the Artificial Intelligence Act. The above-mentioned parts of Document 7 were drawn up by the Commission for internal use and their content is subject to ongoing discussions and deliberations, including in inter-institutional negotiations. The Commission services must be free to explore all possible options in the run-up to ongoing legislative procedures, which are still at an early stage. The risk of disclosing sensitive information regarding the Commission services’ preliminary views before and during inter-institutional negotiations on the legislative proposals at question would deter them from freely expressing their opinions and having frank, internal discussions. Speculations and misinterpretations of the public on the views and reflections put forward in 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

² Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35

³ Judgment in *Council v Sophie in’t Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63

external pressure before and during inter-institutional negotiations. The risk of disclosure of these preliminary views and reflections would therefore seriously undermine the ongoing decision-making processes. This risk is also reasonably foreseeable and not purely hypothetical.

Consequently, the above-mentioned parts of Document 7 have been blanked out.

4. OVERRIDING 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 aforementioned parts of the documents 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 Commission documents](#). You may reuse the disclosed Documents 2, 6 and 7 and the parts of Documents 1 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 2, 6 and 7 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. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 3, 4 and 5 and parts of Document 1 originate from third parties. Please note that they are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

6. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation (EC) No 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 at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

Yours sincerely,

Electronically signed

Roberto Viola

Enclosures: (7)