REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents- Ref GestDem 2021/5292

Dear Mr Fanta,

We refer to your email dated 31 August 2021 wherein you make a request for 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 1 September 2021 under the abovementioned reference number. We also refer to our holding reply, dated 22 September 2021, our reference Ares(2021)5793226, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) scope of your application.

We apologise for the delay in our reply.

1. SCOPE OF YOUR APPLICATION

Your application reads as follows:

‘Dear Communications Networks, Content and Technology,

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:

- Internal documents discussing a possible 'right to repair' of electronic devices dating from since January 1st, 2021

Advance copy via email: ask+request-9901-cfcda202@asktheeu.org
Given the wide-scope of your request we contacted you on 30 September 2021 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001 (our reference, Ares(2021)5948218). In order to help you narrow down the scope of the request, we provided you with the approximate number of documents with indications of references to the ‘right to repair’ that had been identified at that stage and their categories. We indicated the steps that the handling of your application would entail and we concluded that within the remaining time we would be able to deal with a maximum of 15 documents falling within the listed categories.

By your email dated 1 October 2021 (our reference, Ares 6013216) you replied that you would like to receive as many of the 122 documents that we had mentioned in our fair solution proposal. You indicated that your priority is the meeting minutes and notes, but you would appreciate access to the other files as well. By your email of 12 October 2021 (our reference, Ares(2021)6240987) you further requested to receive at least the meeting notes/minutes.

Following the further examination of the documents identified under the category ‘Meeting notes/minutes’ in order to verify whether they fall within the scope of your request, as announced in our fair solution proposal, it was found that the number of the meeting notes/minutes that fall within the scope of your request amounts to six. Taking into account your responses of 1 October and 12 October 2021 we have identified and assessed additional documents falling within the other categories of documents listed in our email of 30 September 2021 and up to 15 documents. As announced in our fair solution proposal, this is what we could achieve, taking into account the Commission’s resources and the global workload of the concerned staff during the same period, within the given timeframe.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified the following documents which fall within the scope of your application after having been restricted as set out above:

- Minutes of the Meeting between DG CONNECT and BEUC, 26 January 2021, Circular Electronics Initiative (‘CEI’) (‘Document 1’)
- DG JUST - DECIDE fiche: Promoting sustainability in consumer after-sales and a new consumer right to repair (‘Document 2’)
- Email exchanges between DG CONNECT and DG JUST between 5 and 14 July 2021 regarding the CEI Communication Outline (‘Document 3’)
- Minutes of the Directors meeting on the CEI and the Right to Repair on 9 March 2021 (‘Document 4’)
- Summary of the bilateral discussion with DG JUST on the Right to Repair, 21 April 2021 (‘Document 5’)
- Minutes of the bilateral discussion with DG JUST on the Right to Repair, 21 April 2021 (‘Document 6’)
- Minutes of the Right to Repair Study Kick off meeting, 30 April 2021 (‘Document 7’)
- Minutes of the Second Joint Discussion on the CEI, 18 May 2021 (‘Document 8’)
- Minutes of CAB-DG working level meeting, 10 June 2021 (‘Document 9’)

- Documents from stakeholders concerning a possible "right to repair" since the beginning of 2021, including minutes of meetings, e-mails and other documents[...]


Email exchanges between 25 June 2021 and 2 July 2021 regarding the DG CONNECT comments to DG JUST (‘Document 10’)
- Terms of Reference for the Study on the CEI Right to Repair (‘Document 11’)
- CEI Communication potential outline - draft (‘Document 12’)
- Roadmap - Communication on the CEI (‘Document 13’)
- Study on a Right to Repair for electronics, Task Clarification Note (‘Document 14’)
- Note to Cabinet Breton (‘Document 15’)

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 partial access can be granted to one document, whilst access is denied for the remaining documents as disclosure of these parts is prevented by the exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Partial disclosure

(i) Protection of privacy and integrity of individuals

Full disclosure 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 it contains the following personal data:

- Names and contact information of Commission staff members not pertaining to the senior management

Article 9(1)(b) of the Data Protection Regulation 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 the decision-making process

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘[a]cess 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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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 as they contain information with regard to ongoing initiatives and policy processes in relation to the issue in question. There is a real and non-hypothetical risk that disclosure of these parts of the document at this stage would negatively affect and seriously undermine the relevant ongoing decision-making process.

Consequently the abovementioned parts of Document 2 have been blanked out.

B. Non-disclosure

We regret to inform you that access to Documents 1 and 3-15 cannot be granted as disclosure is prevented by the abovementioned exception to the right of access laid down in Article 4(3) first subparagraph of Regulation 1049/2001, with regard to the protection of the ongoing decision-making process.

These documents contain sensitive information with regard to ongoing initiatives and policy processes relating to the issue in question. They also contain considerations, reflections and views of the Commission services and of other parties. The content of these 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 process on the issue at question is 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 in an early stage of the decision-making process 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 documents would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

Moreover, parts of the documents contain personal data, in particular the names, initials, functions and contact details of Commission staff members not pertaining to the senior management and names and functions of other natural persons, thus their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section A(i). Other parts of the documents fall outside the scope of your request.

We have considered whether partial access could be granted to these documents. However, partial access is not possible considering that the documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

4. OVER RIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(3) of Regulation 1049/2001 applies, 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 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 the Commission documents. You may reuse the document disclosed 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.

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

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

Yours sincerely,

Roberto Viola

Enclosures: (1)