



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director General

Brussels, 17 August 2022
TRADE/SW/C2 (2022)6298049

Mr Maximilian Henning
Viktoriastrasse 50a
64293 Darmstadt
Germany

***By email only – with request for
explicit acknowledgment of receipt
by email reply:***
[ask+request-11642-
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Subject: Your application for access to document – GestDem 2022/4283

Dear Mr Henning,

I refer to your request for access to documents under Regulation (EC) No 1049/2001¹, dated 25 July 2022 and registered on the same date under the above mentioned reference number.

1. SCOPE OF YOUR REQUEST

In your request you ask for access to:

‘Any documents, for example flash reports, meeting minutes, e-mails, letters, attachments, or instant messages concerning digital aspects, for example source code, trade secrets, algorithms, artificial intelligence or digital trade or electronic commerce more broadly, from the negotiations held between the EU and India in New Delhi from 27 June to 1 July for a potential free trade agreement.’

We have identified three documents falling under the scope of your request:

- 1) EU textual proposal for a chapter on Digital Trade in an EU-India Free Trade Agreement (FTA), presented in the 1st round of FTA negotiations held in New Delhi from 27 June to 1 July 2022;
- 2) Report of the First Round of Negotiations On a Free Trade Agreement between the European Union and India, 27 June – 1 July 2022, New Delhi;
- 3) Report of the First Round of EU-India FTA Negotiations, 27 June – 1 July 2022, New Delhi, Ares(2022)4940311.

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents (Official Journal OJ L 145, 31.5.2001, p. 43).

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

2.1. DOCUMENTS 1 AND 2: FULL RELEASE

Please find attached a copy of the documents 1 and 2 listed under point 1 above. These documents can also be directly accessed at: <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/d951642d-d023-4d7f-86c5-258bb83435b9/details> (textual proposal), and <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/471aa8c3-5f9e-47d8-84e6-799d79df1290/details> (report).

Kindly pay attention to the disclaimer, here below under point 3.

2.2. DOCUMENT 3: RELEASE PREVENTED BY THE INTERNATIONAL RELATIONS EXCEPTION AS PROVIDED FOR IN ARTICLE 4(1)(A) THIRD INDENT OF REGULATION 1049/2001

With regard to document 3, i.e. the internal report of the 1st round of FTA negotiations, having carefully examined it, I regret to have to inform you that it cannot be disclosed, as its disclosure would undermine the protection the EU's international relations. In this regard at release of document 3 to the public is protected by the exception set out in Article 4(1)(a), third indent (protection of international relations) of Regulation 1049/2001, which provides that '*[t]he institutions shall refuse access to a document where disclosure would undermine the 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 1049/2001, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which 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.

The document in question contains detailed and sensitive information related to the discussions in the framework of the ongoing FTA negotiations, the 1st round of which was held in confidence between the EU and the Indian negotiating teams. The document furthermore contains detailed information that would reveal publicly India's initial negotiating positions and related considerations. Against this background, we hold the view that the public disclosure of the document in question would negatively affect both the ability of the European Commission to establish and maintain efficient and trust-based relations with India and to effectively defend EU interests in the context of the ongoing FTA negotiations. We furthermore consider that risk as being reasonably foreseeable and non-hypothetical, since the document, if released, would reveal a third

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

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

country's (i.e. India) approaches and preferences, thus harming the mutual trust in the international relationship.

Finally, considering, whether partial access could be granted to the document, we conclude that the confidentiality necessities require a coherent application of the international relations exceptions of Article 4(1)(a), third indent of Regulation 1049/2001 to the entirety of the document in question, thus also not allowing any partial access to it.

3. DISCLAIMER

Kindly note the following in relation to documents 1 and 2: You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf, based on [Commission Decision 2011/833/EU of 12 December 2011 on the re-use of Commission documents](#)⁴. You may reuse the documents disclosed free of charge 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 any liability stemming from the reuse.

4. POSSIBILITY OF A 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 a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission, either by email to sg-acc-doc@ec.europa.eu, or by letter to the following address:

European Commission
Secretariat-General
'Transparency, Document Management & Access to Documents' (unit SG C.1)
BERL 7/76
Rue de la Loi 200/Wetstraat 200
1049 Brussels
Belgium

Yours sincerely,



Sabine WEYAND
p.o. Léon DELVAUX

⁴ OJ L 330, 14.12.2011, p. 39.

Enclosures:

- 1) EU textual proposal for a chapter on Digital Trade in an EU-India FTA
- 2) Report of the First Round of Negotiations On a Free Trade Agreement between the European Union and India, 27 June – 1 July 2022, New Delhi

