



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The acting Director-General

Brussels,

Subject: Your application for access to documents – Ref. GestDem 2021/0654

Dear Mr Runci,

I refer to your application dated 11 February 2021¹, registered on the same date under the above-mentioned reference number². Your request concerns:

‘documents which contain the following information:

- all correspondence, including attachments (i.e. any emails, mail correspondence or telephone call notes) between DG NEAR, including any Cabinet Members and/or officials, and Ms Nathalie Tocci, Special Adviser to HR/VP
- a list of all meetings and/or calls attended by DG NEAR, including any Cabinet Members and/or officials, that were attended by Ms Nathalie Tocci as well.

The list should include:

- date, individuals attending and organisational affiliation, list of issues discussed, as well as minutes and other reports of these meetings and/or calls;
- all documents prepared for the purpose of the meetings issued both in preparation and after the meetings took place’.

I also refer to our email of 4 March 2021, by which we informed you that an extended time limit was needed for the purpose of internal consultations regarding your request³.

Your application concerns the following 11 documents:

¹ Ref. Ares(2021)1622798.

² Ref. Ares(2021)1686071.

³ Ref. Ares(2021)1686279.

Mr Alessandro Runci
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By email only:
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1. Email exchange between Cabinet Várhelyi and communications firm, 5 November 2020;
2. Belgrade Economic Forum programme, 5 November 2020;
3. Twenty-five years later, The Dayton Agreement and the European Pathway for Bosnia and Herzegovina, 18 November 2020;
4. Roman talks with the Balkans preliminary draft programme, 24 March 2020;
5. Email exchange between Cabinet Várhelyi and Friends of Europe, 6 May 2020;
6. Email exchange between Cabinet Várhelyi and Permanent Representation of Italy to the EU, 6 March 2020;
7. Email exchange between Cabinet Várhelyi and Ministry of Foreign Affairs and International Cooperation of Italy, 17 November 2020;
8. Email exchange between Cabinet Várhelyi and Permanent Representation of Italy to the EU, 5 March 2020;
9. Email exchange between Cabinet Várhelyi and Friends of Europe, 7 May 2020;
10. Letter from Istituto Affari Internazionali and the Italianeuropei Foundation to Commissioner Várhelyi, 3 March 2020;
11. Brief on 14th International Conference of the INSS.

Please note that there is no document containing ‘a list of all meetings and/or calls attended by DG NEAR, including any Cabinet Members and/or officials, that were attended by Ms Nathalie Tocci as well’. As specified in Article 2(3) of Regulation (EC) No 1049/2001⁴, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such document, corresponding to the above description given in your application, is held by the Commission, the Commission is not in a position to fulfil your request in that regard.

Having examined the above-listed documents under the provisions of Regulation (EC) No 1049/2001, I have decided that:

- Partial access can be granted to documents 1-10 subject to redaction of personal data, in accordance with Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001;
- Access must be refused to document 11, as disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(a), third indent (protection of the public interest as regards international relations) and Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001.

The justifications are as follows:

1. Protection of the public interest as regards international relations

Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 provides that the ‘institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations [...]’.

As per settled case-law, the institutions ‘must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields

⁴ 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, Official Journal L 145 of 31 May 2001, p. 43.

covered by [the exceptions provided for in Article 4(1)(a) of Regulation 1049/2001] could undermine the public interest'⁵.

Consequently, 'the Court's review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exception [...] relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers'⁶.

The public disclosure of document 11 would affect the international relations between the EU and the Israeli authorities, given the content of the document, which includes opinions of relevant actors on security issues.

Disclosing document 11, which was not designed for external communications purposes, might lead to misunderstandings and/or misrepresentations regarding the nature of EU-Israel relations. This could be broadly relayed and negatively impact established international relations with Israeli authorities.

Against this background, there is a risk that disclosure of this document would undermine the protection of the public interest as regards international relations. I consider this risk as reasonably foreseeable and non-hypothetical, given the sensitivity of the issues discussed in the document.

2. Protection of the privacy and the integrity of the individual

Full disclosure of documents 1-10 is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001. In particular, these documents contain the names of individuals who are not public figures.

Article 9(1)(b) of the Data Protection Regulation⁷ 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) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, 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.

⁵ Judgment of 3 July 2014, *Council v In 't Veld*, C-350/12, paragraph 63.

⁶ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 40.

⁷ 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.

Partial Access

We have considered whether partial access could be granted to document 11 but this was deemed impossible, as the sensitive elements are integral to it. Please note that we cannot provide you with more detailed information on this document without disclosing its substance, which is protected by the quoted exceptions laid down in Article 4 of Regulation (EC) No 1049/2001.

Means of Redress

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 its position. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-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,

[e-signed]

Maciej Popowski

Enclosures: Documents 1-10