EUROPEAN COMMISSION

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DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001[1]

Subject: **Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2018/435**

Dear Mr McNamee,

I refer to your e-mail of 20 March 2018, registered on 21 March 2018, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents[2] (hereafter 'Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 18 January 2018, addressed to the Directorate-General for Migration and Home Affairs, you requested access to (numbering added for easier reference):

1) 'all communications (including emails) exchanged in October, November and December 2017 between DG HOME Unit D4 (Cybercrime) and the EU Delegation to the Council of Europe regarding the draft Recommendation of the Council of Europe on the roles and responsibilities of internet intermediaries';
2) 'the comments sent by DG HOME to the EU Delegation to the Council of Europe on the draft Recommendation of the Council of Europe on the roles and responsibilities of internet intermediaries';

[1] Official Journal L 345 of 29.12.2001, p. 94.
[2] Official Journal L 145 of 31.5.2001, p. 43.

3) 'the invitation sent to Member States to the meeting at 15h on Tuesday, 22nd November to discuss comments received from DG HOME';
4) 'any notes / minutes from the above-mentioned meeting on 22nd November prepared by the European Commission as well as input received from Member States following this meeting';
5) 'all communications in the period October to December (inclusive) between European Commission officials and Member States (individually or collectively) regarding the draft Recommendation of the Council of Europe on the roles and responsibilities of internet intermediaries'; and
6) 'communications between Commission officials agreeing that the view of the Commission was that the draft Recommendation of the Council of Europe on the roles and responsibilities of internet intermediaries was, as was apparently asserted in the invitation to the 22nd November meeting, "in stark contrast with the EU acquis"'.

The European Commission has identified the following documents as falling under the scope of your request (list of documents of the initial reply):

- Message from a European Commission official to the EU Delegation in Strasbourg, 9 October 2017, Ref. Ares(2018)1093348 (hereafter 'document 1.1');
- Message from a European Commission official to the EU Delegation in Strasbourg, 12 October 2017, Ref. Ares(2018)1093477 (hereafter 'document 1.2');
- Message from a European Commission official to the EU Delegation in Strasbourg, 12 October 2017, Ref. Ares(2018)1093575 (hereafter 'document 1.3');
- Message from a European Commission official to the EU Delegation in Strasbourg, 16 October 2017, Ref. Ares(2018)1094846 (hereafter 'document 1.4');
- Message from a European Commission official to the EU Delegation in Strasbourg, 16 October 2017, Ref. Ares(2018)1093672 (hereafter 'document 1.5');
- Message from a European Commission official to the EU Delegation in Strasbourg, 7 November 2017, Ref. Ares(2018)1093802 (hereafter 'document 1.6');
- Comments on draft recommendation by a European Commission official, 12 October 2017, Ref. Ares(2018)1095727 (hereafter 'document 2.1');
- Comments on draft recommendation by the Directorate-General for Migration and Home Affairs, 27 October 2017, Ref. Ares(2018)1095010 (hereafter 'document 2.2');
- Message from a European Commission official to an official of the Estonia Presidency of the Council, 12 October 2017, Ref. Ares(2018)1094000 (hereafter 'document 3.1');

- Message from an official of the Estonia Presidency of the Council to a European Commission official, 19 October 2017, Ref. Ares(2018)1094111 (hereafter 'document 3.2');
- Message from a European Commission official to an official of the Estonia Presidency of the Council, 20 October 2017, Ref. Ares(2018)1094197 (hereafter 'document 3.3');
- Message from an official of the Estonia Presidency of the Council to a European Commission official, 20 October 2017, Ref. Ares(2018)1094263 (hereafter 'document 3.4');
- Message from an official of the Estonia Presidency of the Council to a European Commission official, 6 December 2017, Ref. Ares(2018)1094338 (hereafter 'document 3.5');
- Message from a European Commission official to an official of the Estonia Presidency of the Council, 6 December 2017, Ref. Ares(2018)1094546 (hereafter 'document 3.6');
- Message from a European Commission official to an official of the Estonia Presidency of the Council, 6 December 2017, Ref. Ares(2018)1094662 (hereafter 'document 3.7'); and
- Message from a European Commission official to an official of the United Kingdom, 20 October 2017, Ref. Ares(2018)1095304 (hereafter 'document 3.8').

Documents 1.2, 1.6, 3.1 and 3.8 contain attachments. The attachment to documents 1.2 and 3.1 is document 2.1. The attachment to document 1.6 is document 2.2. The attachment to document 3.8 is identical to document 2.1[3].

In its initial reply 9 March 2018, the Directorate-General for Migration and Home Affairs:

- Granted wide partial access to six documents (documents 1.3, 3.2, 3.3, 3.4, 3.5 and 3.6), only subject to the redaction of personal data based on Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001;
- Granted partial access to six documents (documents 1.1, 1.2, 1.5, 1.6, 3.1 and 3.7), subject to redactions based on Article 4(1)(b) (protection of privacy and the integrity of the individual), Article 4(1)(a), first indent (protection of public security) and Article 4(3), second subparagraph (protection of the decision-making process) of Regulation 1049/2001;
- Refused access to four documents (documents 1.4, 2.1, 2.2 and 3.8), based on Article 4(1)(b) (protection of privacy and the integrity of the individual), Article 4(1)(a), first (protection of public security) and third (protection of international relations) indents, and Article 4(3), second subparagraph (protection of the decision-making process) of Regulation 1049/2001.

[3] With the exception of some typos corrected.

Through your confirmatory application, you request a review of this position. You accept the redaction of personal data based on Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001 but contest all other redactions and refusals.

In your confirmatory application, you provide further clarifications regarding 'the invitation sent to Member States to the meeting at 15h on Tuesday, 22nd November to discuss comments received from DG HOME' (third part of your initial request). Please note that this document was drawn up by the European External Action Service and forms part of the access-to-documents request you have recently addressed to the latter[4].

Furthermore, you explain in your confirmatory request that you have had 'access to all drafts of the Recommendation'. We therefore consider that, in line with the wording of your initial request, you are not interested in the different draft versions of the Recommendation but in the comments and track changes by the Directorate-General for Migration and Home Affairs on the draft Recommendation. The two draft Recommendations on which the Directorate-General for Migration and Home Affairs commented are 'MSI-NET(2016)05rev4' (document 2.1) and 'MSI-NET(2016)05rev5' (document 2.2).

Consequently, this confirmatory decision concerns 10 documents, namely documents 1.1, 1.2, 1.4, 1.5, 1.6, 2.1, 2.2, 3.1, 3.7 and 3.8.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I am pleased to inform you that:

- Full access is granted to documents 1.1, 1.4, 1.5, 1.6 and 3.7;
- Wider partial access is granted to documents 1.2 and 3.1, subject to redactions based on Article 4(1)(a), first indent (protection of public security) and Article 4(3), second subparagraph (protection of the decision-making process) of Regulation 1049/2001.

Any personal data have been redacted in the above-mentioned seven documents, which you accepted in your confirmatory application.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, 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.

[4] Reference number 2018/027.

Concerning documents 2.1 and 2.2, the initial decision by the Directorate-General for Migration and Home Affairs to refuse access has to be confirmed, based on Article 4(1)(a), first indent (protection of public security), Article 4(2), second indent (protection of legal advice), and Article 4(3), second subparagraph (protection of the decision-making process) of Regulation 1049/2001.

Concerning document 3.8, the initial decision by the Directorate-General for Migration and Home Affairs to refuse access has to be confirmed, based on Article 4(1)(a), third indent (protection of international relations) of Regulation 1049/2001.

The reasons for the redactions and refusals are set out below. In order to clarify why the exceptions apply, section 2.1 briefly explains the relevance of the Recommendation in the light of existing EU legislation and policies.

2.1. The Council of Europe Recommendation and existing EU legislation

The Council of Europe 'Recommendation on the roles and responsibilities of internet intermediaries'[5] (hereafter 'the Recommendation'), adopted by the Committee of Ministers on 7 March 2018, calls on States, including all Member States of the EU, to follow a number of guidelines in their relationships with Internet intermediaries. This includes detailed prescriptions on the conditions under which authorities should interact with Internet intermediaries with regard to the detection and removal of illegal content, and the procedures that should be followed to ensure compliance with human rights.

The EU has adopted legislation on these matters. This includes, among others, the e-commerce directive (Directive 2000/31/EC)[6], the directive against child sexual exploitation (Directive 2011/93/EU[7]) and the anti-terrorism directive (Directive (EU) 2017/541)[8]. The EU has also launched and supported policies and initiatives for Member States, national authorities, industry and civil society to take action to detect and remove criminal content online. Two current examples of such initiatives are the *Global Alliance against child sexual abuse online* (its successor being the *WeProtect Global Alliance* to end child sexual exploitation online) and the *EU Internet Forum.*

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5 Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14.

6 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Official Journal L 178 of 17.7.2000, p. 1 to 16.

7 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, Official Journal L 335 of 17.12.2011, p. 1 to 14.

8 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, Official Journal L 88 of 31.3.2017, p. 6 to 21.

Furthermore, the European Commission has recently adopted a Communication on Tackling Illegal Content Online (COM(2017) 555 final)[9] and a Recommendation on measures to effectively tackle illegal content online (C(2018) 1177 final)[10].

Therefore, the EU Member States and the European Commission had an interest in ensuring that the Council of Europe Recommendation would be coherent with existing EU legislation and policies in this area, and in particular to avoid creating any obstacles to EU efforts in the fight against illegal content online such as terrorist content and child sexual abuse material). The European Commission's practical guidance on external action[11] aims at ensuring that Member States take positions in international organisations to ensure fulfilment of the obligations arising from EU legislation, facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

The determination in international organisations of a EU position other than those which lead to the adoption of acts having legal effect include, in accordance with well-established practice, consultation among Commission services, preparation of the EU position in specific Council Working Parties, and information and consultation of the European External Action Service and the relevant EU Delegation in view of local coordination with the representatives of Member States.

The exchanges of information and views among the European Commission, the European External Action Service and Member States in order to coordinate positions in international organisations have to be considered as part of a decision-making process for the purposes of Article 4(3) of Regulation 1049/2001. This applies irrespectively of whether they ultimately result in an official and formal decision by the institutions. Indeed, such exchanges are essential for the decisions taken by the Member States in the context of the negotiation, and adoption, of the Council of Europe Recommendation.

2.2. Protection of the public interest as regards public security

Article 4(1)(a), first indent of Regulation 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] the public interest as regards [...] public security'.

The very limited withheld parts of documents 1.2 and 3.1, as well as the comments and proposed changes of a Commission official and of the Directorate-General for Migration and Home Affairs included in documents 2.1 and 2.2 reflect the position of the Directorate-General for Migration and Home Affairs on the draft Recommendation of the Council of Europe's Committee of Experts.

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9 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Tackling Illegal Content Online – Towards an enhanced responsibility of online platforms, COM(2017) 555 final, https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-555-F1-EN-MAIN-PART-1.PDF.

10 Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online C/2018/1177, Official Journal L 63 of 6.3.2018, p. 50 to 61.

11 Vademecum on the External Action of the European Union, SEC(2011)881, point 2.3.1.2, page 25, http://ec.europa.eu/transparency/regdoc/rep/2/2011/EN/2-2011-881-EN-1-0.Pdf.

They set out the specific concerns of the Directorate-General for Migration and Home Affairs on certain language contained in the draft Recommendation in relation to existing EU legislation and policies to fight child sexual abuse and terrorist propaganda online. In particular, the Directorate-General for Migration and Home Affairs established in these withheld parts why, and how, certain parts of the draft Recommendation create obstacles to EU efforts in the fight against illegal content online (e.g. terrorist content, child sexual abuse material, hate speech).

Disclosure of this information would not only render public the specific concerns of the Directorate-General for Migration and Home Affairs regarding the draft Recommendation but reveal strategic views, choices and priorities regarding the European Commission's efforts in effectively fighting child sexual abuse and terrorist propaganda online. The description of the withheld content cannot be more specific without undermining the interest protected by Article 4(1)(a), first indent of Regulation 1049/2001.

Indeed, there would be a real and not purely hypothetical risk that the release of internal, strategic views on the conditions necessary for States and industry to comply with fundamental rights obligations would lead to premature conclusions in the public and be used in campaigns to put pressure and deter Internet intermediaries from taking voluntary measures to facilitate the effective detection and removal of illegal content online. This in turn would be detrimental to EU policies aiming at countering criminal activities on the Internet.

The EU efforts in the fight against illegal content online, including attempts to ensure a meaningful association of industry, are fully ongoing. The Commission considers that the active involvement of industry is essential for the effectiveness of measures to detect, report and eliminate illegal content. The dissemination of illegal content takes place within their own infrastructure, and industry actors have the knowledge and means to make this dissemination harder. For example, the proactive measures taken by some industry actors have contributed to increasing the amount of child sexual abuse material online detected, filtered out from searches, as well as to identifying child sexual abuse perpetrators and rescuing child victims.

The Commission considers that such involvement should be stepped up, and has called on online platforms, in light of their central role and capabilities, and their associated responsibilities, to adopt effective proactive measures to detect and remove illegal content online. The Commission also encourages industry to ensure an effective uptake of innovations which may contribute to increased efficiency and effectiveness of automatic detection procedures.

Furthermore, external pressure from stakeholders and activists campaigning against those voluntary measures by industry in the fight against online crimes is high. For example, European Digital Rights, the organisation you work for, has been publishing statements attacking current EU policies and accusing the EU and Member States of circumventing their fundamental rights obligations by using the cooperation of industry to 'privatise law enforcement', thus suggesting that industry would become an accomplice in breaches fundamental rights[12].

Given the paramount importance of the association of industry to these efforts as explained above, any measure which risks having a negative effect on the readiness of industry to cooperate must be avoided. The existing voluntary cooperation to fight these crimes has a net economic cost for companies and there is little incentive for them to participate beyond corporate social responsibility and a sense of public duty. Those companies less willing to be put on the spotlight by campaigns accusing them of violating fundamental rights would likely stop their cooperation or decline to initiate one. This would have an impact on the effectiveness of measures to fight child sexual abuse and terrorism propaganda online and would negatively affect public security.

Due to the specific nature of the withheld comments as regards the obstacles the draft Recommendation would have created if adopted in that preliminary version, and the reference to specific measures of the draft Recommendation, I consider that the risk of undermining the public security is real and not purely hypothetical. The fact that the Recommendation has been adopted and detrimental language had been removed from the adopted text by the Council of Europe Ministers does not invalidate the above reasoning.

I therefore conclude that the disclosure of internal views and assessments of the Directorate-General for Migration and Home Affairs of aspects restricting the detection and removal of illegal content online, reflecting strategic choices and priorities, risks undermining the policies of the European Union in the fight against child sexual abuse and terrorist propaganda.

It follows that the disclosure of (the refused parts of) documents 1.2, 2.1, 2.2 and 3.1 would undermine the protection of the public interest as regards public security and access to them must therefore be refused based on Article 4(1)(a), first indent of Regulation 1049/2001.

[12] Some recent examples include the entries on the website of European Digital Rights, https://edri.org/, for 13 February 2018 ('LEAK: European Commission's reckless draft Recommendation on "illegal" content'); 1 March 2018 ('EU Commission's Recommendation: Let's put internet giants in charge of censoring Europe'); or 6 March 2018 ('European policy makers want faulty filters to rule the internet: Your action is needed!').

2.3. Protection of legal advice and of the decision-making process

In accordance with the case law of the Court of Justice, the Commission, 'when assessing a request for access to documents held by it, may take into account more than one of the grounds for refusal provided for in Article 4 of Regulation No 1049/2001' and two different exceptions can, as in the present case, be 'closely connected'[13].

Article 4(2), second indent of Regulation 1049/2001 provides that 'the institutions shall refuse access to a document where disclosure would undermine the protection of [...] court proceedings and legal advice, [...] unless there is an overriding public interest in disclosure'.

Article 4(3), second subparagraph of Regulation 1049/2001 provides that 'access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure'.

As the General Court ruled in its judgment of 15 September 2016, *Herbert Smith Freehills v Commission*[14], '[legal advice] is a question of advice relating to a legal issue, regardless of the way in which that advice is given. In other words, it is irrelevant, for the purpose of applying the exception relating to the protection of legal advice, whether the document containing that advice was provided at an early, late or final stage of the decision-making process. In the same way, the fact of the advice having been given in a formal or informal context has no effect on the interpretation of that concept.'

The comments of a policy officer and of the Directorate-General for Migration and Home Affairs included in documents 2.1 and 2.2 assess the compatibility of the provisions of the draft Recommendation with EU legislation. Furthermore, they include opinions of a legal nature on the compatibility of existing EU rules with human rights, such as the right to private and family life and freedom of expression. In doing so, the comments provide interpretations of case law of the European Court of Human Rights.

The legal advice provided is of a wide scope, with relevance far beyond the – now concluded – negotiation of the Council of Europe Recommendation. The conditions under which the monitoring and removal of certain content online can become a lawful restriction of human rights constitutes a legal question which continues to be discussed among stakeholders. In light of the ongoing implementation of EU policies in the area of fighting child sexual abuse and terrorist content online, and in particular the current efforts to associate industry, the legal opinions expressed by the Directorate-General for Migration and Home Affairs remain topical.

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[13] Judgment of 13 September 2013 in Case T-380/08, *Netherlands v Commission*, EU:T:2013:480, paragraph 34.

[14] Judgment of 15 September 2016 in Case T-755/14, *Herbert Smith Freehills v Commission*, EU:T:2016:482, paragraph 47.

If the policy officer concerned would have to expect that his legal opinions on draft instruments would be made public after the adoption of the instrument, the institution's interest in receiving frank, objective and comprehensive advice on such matters in the future would be undermined.

Similarly, the disclosure of opinions for internal use as part of deliberations and preliminary consultations within the European Commission, as they are included in documents 1.2, 2.1, 2.2 and 3.1, would seriously undermine the European Commission's, and more widely, the European Union's decision-making process in the area of external action, in particular vis-à-vis international organisations. In order to present a coherent EU position in the framework of international organisations, it is indispensable that the European Commission services can hold a frank and uncensored exchange with the EU Delegations and the Member States, without having to fear that every detail of this exchange will be made public after the conclusion of the discussions at stake.

Indeed, in particular in the area of external action where the EU and its Member States have to interact with multiple actors and third countries in a short period of time, the availability of rapid and uncensored information is paramount for achieving consistency of the position of EU Member States with EU policies and defending the Union's interest in international organisations. The full disclosure of the exchanges between the Directorate-General for Migration and Home Affairs and the EU Delegation as well as the Member States, on such a sensitive and public security-related topic as is the EU's fight against child sexual abuse and terrorist propaganda, would discourage the EU actors involved of exchanging information rapidly and frankly in the future, and would risk leading to self-censorship.

Such restraint in providing, and exchanging, information and views would not only undermine the decision-making process of the EU and of the different actors involved leading to positions in the international organisation concerned but also have a negative effect on the EU's international relations as it would decrease the likelihood for achieving consistency of Member States' positions with EU policies.

I therefore conclude that the very limited redacted parts of documents 1.2 and 3.1, as well as the comments and proposed changes in documents 2.1 and 2.2, have to be withheld based on Article 4(3), second subparagraph (protection of the decision-making process) of Regulation 1049/2001. Furthermore, the comments and proposed changes in documents 2.1 and 2.2 also have to be withheld on the basis of Article 4(2), second indent (protection of legal advice) of Regulation 1049/2001.

2.4. Protection of international relations

Article 4(1)(a), third indent of Regulation 1049/2001 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 [...]'.

The General Court stressed that 'the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest and, consequently, that 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'[15].

Document 3.8 contains an exchange of information in the framework of the activities of the *WeProtect Global Alliance* to end child sexual exploitation online. The Commission supports the activities of the *WeProtect Global Alliance* as the entity successor to the *Global Alliance against child sexual abuse online*, which the European Commission itself set up. The *WeProtect Global Alliance*, rallying more than 80 countries, industry and civil society organisations towards a common set of aims, is an essential element in the international dimension of EU policies to fight child sexual abuse online. The Commission participates in the activities of its Board as a member. The message contained in document 3.8 was addressed by a Commission official as member of the Board to the *WeProtect Global Alliance* secretariat at the United Kingdom Home Office to support the United Kingdom Member of the Board.

It is essential for the proper functioning of the *WeProtect Global Alliance* that members of the Board, observers and the secretariat may exchange information and share views in matters that have an impact on the initiative's objectives in an atmosphere of trust and confidentiality. The sensitivity of the issues dealt by the *WeProtect Global Alliance*, namely the fight against the crimes of child sexual exploitation online, reinforce the expectations of confidentiality. Disclosure of such exchanges of information and views would breach the expectations of confidentiality among members and would deter members from making contributions to the *WeProtect Global Alliance* discussions without being unduly influenced by the prospect of wide disclosure. This would result in a less effective functioning of the initiative, and it would harm the external relations of the EU in the pursuit of the EU's policy objectives.

In your confirmatory application, you contest the use of this exception on two grounds. First, you allege that the document shared with the secretariat of *WeProtect Global Alliance* has been leaked to private companies by the Commission, namely to the companies that are member of the *WeProtect Global Alliance* Board. Second, you argue that by sharing the document with the secretariat of the *WeProtect Global Alliance*, the Commission had had already undermined the public interest because this initiative includes private companies in its Board and the participation of those members in the Board would (only) serve their business interests.

[15] Judgment of 25 April 2007 in Case T-264/04, *WWF European Policy Programme v Council*, EU:T:2007:114, paragraph 40.

In this respect, it appears clearly from the text of the message, that it was addressed to the United Kingdom Home Office secretariat of the *WeProtect Global Alliance* to support the United Kingdom government member of the *WeProtect Global Alliance* Board. The message was not sent for distribution to all members of the Board, nor specifically to the companies that are represented at the Board, and was not supposed to be shared with such companies, nor is there any indication that it has actually been shared.

Furthermore, the Commission does not consider that the fact that the *WeProtect Global Alliance* initiative associates a consistent number of private companies which are important actors in the Internet, would undermine the public interest. On the contrary, we consider that it serves the objective of fighting child sexual exploitation online in a substantially more effective way. This assessment is shared by EU Member States, all of which are members of the *WeProtect Global Alliance*. The participation of industry actors in the *WeProtect Global Alliance* initiative means that those actors voluntarily commit to take action to fight child sexual abuse online. The Commission has no indication that participation of industry members in the Board would be guided by their commercial interests to the detriment of the public interest and in disregard of their commitments.

Following from the above, I conclude that document 3.8 has to be withheld based on Article 4(1)(a), third indent (protection of international relations) of Regulation 1049/2001.

3. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2), second indent (protection of legal advice), and Article 4(3), second subparagraph (protection of the decision-making process) of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your confirmatory application, you do not put forward any reasoning pointing to an overriding public interest in disclosing the documents requested.

Nor have I been able to identify any public interest capable of overriding the public and private interests protected by Article 4(2), second indent (protection of legal advice), and Article 4(3), second subparagraph (protection of the decision-making process) of Regulation 1049/2001.

Furthermore, I confirm that the exceptions to public access of Regulation 1049/2001 have been interpreted and applied strictly, leading to full access to five documents (subject to the redaction of personal data) and wider partial access to two documents.

Please note also that Article 4(1)(a) and 4(1)(b) of Regulation 1049/2001 do not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting (further) partial access to the documents requested. However, for the reasons explained above, no meaningful (further) partial access is possible without undermining the interests described above.

Consequently, I have come to the conclusion that the (refused parts of the) documents requested are covered in their entirety by the invoked exceptions to the right of public access.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Martin SELMAYR
Secretary-General

Enclosures: 7 (documents 1.1, 1.2, 1.4, 1.5, 1.6, 3.1 and 3.7).