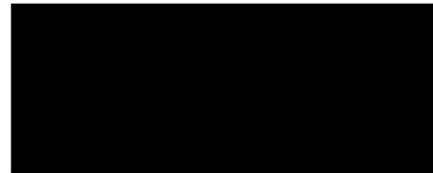




EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels, 22nd November 2022
CNECT.R.4



Via email:



Subject: Your application for access to documents 2022/5865



We refer to your email of 11 October 2022 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’), which was registered on 13 October 2022 under the abovementioned reference number.

1. SCOPE OF YOUR APPLICATIONS

You have requested access to the following documents

“(..) 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 Roberto Viola and Orange on 19. 07. 2021.”

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUESTS

The following documents have been identified as falling within the scope of your requests:

- Briefing, Meeting with Orange, ARES(2021)4946112 (**“Document 1”**)
- Letter from Orange, 24.06.2021, ARES(2021)4237027, (**“Document 2”**)
- BTO, Meeting with Orange, 20.07.221, (**“Document 3”**)

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 opinion of the third party, we have arrived at the conclusion that partial access can be granted to Documents 1, 2 and 3. Full disclosure of the Documents identified is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) 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 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.'*

Document 1 contains preliminary opinions and reflections of Commission services regarding the Recommendation on Relevant markets and on the ongoing work in this field. The risk of disclosing information concerning preliminary opinions of different Commission services before the adoption of the decisions in question would deter the Commission from freely expressing their views and conducting frank and internal discussions. Speculations and misinterpretations of the public on the views and reflections put forward in these 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 external pressure during the ongoing decision-making processes. The risk of disclosure of such preliminary opinions and reflections would therefore seriously undermine the ongoing decision-making processes. That risk is also reasonably foreseeable and not purely hypothetical.

In light of the foregoing considerations, we consider that pursuant to Article 4(3) first subparagraph of the Regulation 1049/2001, access cannot be granted to the abovementioned parts.

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

(ii) Protection of commercial interests

The first indent of Article 4(2) of the Regulation 1049/2001 provides that *"the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure"*.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components. Parts of Document 1 contain views and positions related to commercial interests of the legal entity concerned. Parts of Document 2 contain confidential business information on the activities of the legal entity concerned and strategic internal costs. The disclosure of these parts would harm commercial interests of the legal entity. In addition to this, part of Document 3 contains sensitive information on the business strategy of the legal entity concerned, as well as its strategy in a potential court case. There is a real and non-hypothetical risk that disclosure of these parts of the above-mentioned documents

could undermine and seriously affect the commercial interests of the company at question. Therefore, access to these parts of the documents cannot be granted as the disclosure is prevented by the exception to the right of access referred to above.

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

(ii) Protection of privacy and integrity of individuals

Full disclosure of Documents 2 and 3 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 functions of Commission staff members not pertaining to the senior management;
- Names, functions, and signatures of other natural persons.

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.

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 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.

4. OVERRIDING INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of the documents identified. 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 which are being withheld 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 (parts of) disclosed Documents 1 and 3 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.

¹Regulation (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.

Please note that Documents 1 and 3 were drawn up for internal use under the responsibility of the relevant staff member of DG CONNECT. They solely reflect the author's interpretation of the interventions made. They do not reflect the position of nor do they commit the Commission, DG CONNECT and/or any third party referred to and cannot be quoted as such.

Please note also that Document 2 originating from a third party is disclosed to you based on Regulation 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 document without the agreement of the originator, who may hold an intellectual property right on it. 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 Brussels

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

Yours faithfully,

Electronically signed



Enclosures: (3)