



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

The Director-General

Brussels
CNECT.R.4

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Via email:



Subject: Your request for access to document –EASE 2022/7151

Dear Mr Rudl,

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 (CE) No 1049/2001’), which was registered on 11 December 2022 under the reference number indicated in the subject of this letter.

1. SCOPE OF YOUR APPLICATION

Your request reads as follows:

“[...] 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 03. 05. 2022. [...]”.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Back to Office Report, RV meeting with Orange, ARES(2022)3438514, (**“Document 1”**)
- Briefing Note, Meeting with Orange, ARES(2022)8820001, (**“Document 2”**)
- Email exchanges, 2-3 May 2022, Ares(2022)8811768, (**“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 1-3, as disclosure of these (parts of) Documents is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 1 - 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:

- names, functions and telephone numbers of Commission staff members not pertaining to senior management;
- names, functions 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, we 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.

(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.

¹ 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.

Parts of Documents 2 and 3 contain sensitive business information, views and positions related to commercial interests of the legal entity concerned. 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 Documents 2 and 3 cannot be granted as the disclosure is prevented by the exception to the right of access referred to above.

Consequently, the above-mentioned parts of Documents 2 and 3 have been redacted.

(iii) 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.’*

Documents 1 and 2 are internal documents that contain informal views and positions for which the final decision has not been taken yet. Precisely, parts of Document 2 contain information on the activities of the European Alliance for Industrial Data and Cloud and its members, as well as information on the Connecting European Facility (CEF) funding for which discussions are still ongoing. In addition, parts of Documents 1 and 2 include informal views and positions of the Commission services on initiatives and discussions that are likely to lead to policy initiatives and/or decisions in the future.

The risk of disclosing information concerning preliminary opinions and views of the participants in the European Alliance for Industrial Data and Cloud before the adoption of the decisions in question would deter the Commission and the members of the European Alliance for Industrial Data and Cloud from freely expressing their views and conducting frank and internal discussions and negotiations. 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 and would affect the discussions relating to the European Alliance for Industrial Data and Cloud, exposing the services 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.

According to the second subparagraph of Article 4(3) of Regulation 1049/2001, *‘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 in view of the protection of the decision-making process.’*

Parts of Document 2 contain informal views and positions of the Commission, as well as informal information of the co-legislators on the negotiations on the policy initiative “Path to the Digital Decade” and on the State Aid guidelines, which form part of deliberations and preliminary positions of the European Commission and the co-legislators for which the decisions have been taken. The public disclosure of these internal views would deter the European Commission, as well as the co-legislators from freely expressing opinions and having frank, internal discussions, if they were to be made

publicly available. Furthermore, this would pose a continued risk to discussions and deliberations on the implementation of the initiatives in question and would expose the European Commission and the co-legislators to undue external pressure and disseminate preliminary conclusions that do not represent the final position of the European Commission and the co-legislators. The risk of disclosure of these views and reflections put forward in the parts of the Document 2 would seriously undermine the decision-making process. That risk is also reasonably foreseeable and not purely hypothetical.

In light of the foregoing, we consider that pursuant to Article 4(3) first and second subparagraph of the Regulation 1049/2001, access cannot be granted to the abovementioned parts of Documents 1 and 2. Consequently, the above-mentioned parts of Documents 1 and 2 have been redacted.

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 1-3 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.

Please note that Documents 1-3 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.

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 **by asking for a review via your portal² account** (available only for initial requests submitted via the portal account), or via the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076

² <https://www.ec.europa.eu/transparency/documents-request>

B-1049 Brussels

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

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures (3)