



## EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP  
AND SMES

The Director-General

Brussels  
GROW.A.3/MN/MH/mvn

Mr Mark Scott  
Rue de la loi, 62  
1040 Brussels  
Belgium

By email : ask+request-10284-  
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**Subject: Your application for access to documents – Gestdem No 2021/7399**

Dear Sir,

I refer to your request dated 29 November 2021, registered on 1 December 2021 under the above mentioned reference number and to your email clarifying your request of 3 December 2021. I apologise for the delay in our response.

### **1. SCOPE OF YOUR APPLICATION**

Your initial application date 29 November 2021 reads as follows:

*I am requesting documents which contain the following information:*

*All communication related to the developments connected to the EU-US Trade and Tech Council, including emails and other communication with the US Commerce Department, State Department, United States Trade Representative and White House (National Security Council) between June, 2021 and November 2021.*

Following our e-mail dated 3 December 2021 asking for a clarification on your request, you replied on 7 December 2021 with the following information:

*In response to your questions:*

*- Which type of communication? All exchanges within the Commission (at unit, DG & Cabinet level), as well as exchanges with external stakeholders, including trade groups, NGOs and think tanks, over the given time period. I also would like exchanges with all US federal agencies, including the White House. The specific topics relate to any discussion of the EU-US Trade and Tech Council. I would like all communication/exchanges related to all the working groups, as outlined in the Councils' working documents.*

Please note that due to the wide scope of your request, covering also areas falling under the responsibility of other Directorates-General, parts of your request have been attributed to other Directorates-General. This reply relates only to the documents held by the Directorate-

General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW). You received/will receive the replies from the other respective Directorates-General in due course.

## **2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST**

We have identified 21 documents listed in the enclosed table which fall within the scope of your request.

Please note that, as a means to ensure transparency and allow stakeholders to engage with the Commission, the Commission has launched a dedicated online platform on the Trade and Technology Council that allows stakeholders to submit comments and position papers and by which the Commission provides updates on the ongoing work in the context of the TTC. You are invited to consult this website for further information on the Trade and Technology Council.

## **3. ASSESSMENT UNDER REGULATION 1049/2001**

Having assessed the identified documents under the provisions of Regulation 1049/2001, I regret to inform you that access to documents (7 to 12 and 16 to 20) cannot be granted as they are covered by the exception to the right of access laid down in Article 4(1)(a), third indent of Regulation 1049/2001.

Article 4(1)(a), third indent of Regulation 1049/2001 stipulates that access to a document shall be refused where disclosure would undermine the protection of the public interests 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 No 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"*<sup>1</sup>. 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"*<sup>2</sup>.

These documents relate to meetings and exchange of documents on EU-US Trade and Technology Council. They relate to discussions which are part of ongoing and long-term negotiations between the EU and the US. There is a concrete risk that the public disclosure of these documents would not only have a negative effect on the negotiating capacity of the EU but also affect the mutual trust between the EU and the US and thus undermine their relations. As the Court recognised in Case T-301/10 *in't Veld v Commission*, *"[...] establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise"*<sup>3</sup>.

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<sup>1</sup> See Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

<sup>2</sup> Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

<sup>3</sup> Judgment in *Sophie in't Veld v Commission* T-301/10, EU:T:2013:135, paragraph 126.

Consequently, access to the requested documents has to be refused as there is a real and non-hypothetical risk that their disclosure would undermine the public interest as regards international relations.

#### **4. PARTIAL ACCESS**

We have considered whether partial access could be granted to the documents requested. A complete disclosure of documents 1 to 6, 13 to 15 and 21 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, because they contain the following data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;
- other information relating to identified or identifiable natural persons.

Article 9(1)(b) of the Data Protection Regulation 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 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 these 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. 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 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 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

*Electronically signed*  
Kerstin Jorna  
Director-General