



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

The Director-General

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Subject: Your application for public access to documents – GestDem Ref No 2021/7463

Dear Mr Scott,

We refer to your email dated 29 November 2021, in which you submitted an application for access to documents within the framework of Regulation (EC) 1049/2001¹.

1. SCOPE OF YOUR REQUEST

You requested access to the following documents:

“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 request for clarification, you informed us on 30 November 2021 that in relation to developments you *“request all communication, both internal & external, as well as documentation in relation to the working groups of the EU-US Trade and Tech Council, communication with any US federal agency or White House connected to the Trade and Tech Council, and communication between DG RTD and other Directorate Generals about both the creation of the Trade and Tech Council and the working groups created as part of this process”.*

Please note that due to the wide scope of your request, covering also areas falling under the responsibility of other Directorates-Generals (hereinafter referred to as ‘DGs’), parts

¹ 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 (OJ L 145, 31.5.2001, p. 43) , hereinafter referred to as ‘*Regulation (EC) 1049/2001*’.

of your request have been attributed to other DGs. This reply relates only to the documents for which the Directorate-General for Research and Innovation (hereinafter referred to as '*DG RTD*') is responsible. The other concerned DGs will reply to you separately.

We have identified 14 documents falling under the scope of your request (hereinafter the '*requested documents*'), namely:

1. Note for Directors' Meeting of 6 September 2021, '*EU-US Trade and Technology Council*'
2. Note for Directors' Meeting of 7 December 2021, '*EU-US Trade and Technology Council and EU-US Energy Council Technology Working Group Update*'
3. Email from the American Chamber of Commerce to the EU to the Working Group 2 EU Co-Chairs, 28 September 2021, and response from the DG RTD, 11 October 2021
4. Two emails from Microsoft to the Working Group 2 EU Co-Chairs, 28 and 29 September 2021, and response from the DG RTD, 11 October 2021
5. Annex to Microsoft email of 29 September 2021, draft '*Proposal for E.U.-U.S. Digital Democracy, Trust, and Fairness Accord*' and draft '*Appendix, Illustrative Text for E.U.-U.S. Digital Democracy, Trust, and Fairness Accord*'
6. Email from the United States to the Working Group 2 EU Co-Chairs, 31 August 2021
7. Email of 16 September 2021, Report of 1st Working Group 2 meeting
8. Email of 1 October 2021, Summary of Pittsburgh Summit, 1.10
9. Email of 13 October 2021, Summary of EU-US TTC Chairs meeting
10. Email exchange between DG RTD, DG Trade and DG CNECT, TTC Working Group Stakeholder outreach, 9 and 11 November 2021
11. Email of 18 November 2021, Report on TTC meeting
12. Briefing '*Commissioner Gabriel at meeting on the EU-US Trade and Technology Council (TTC)*', 1 September 2021
13. Email of 17 September 2021, Short Summary TTC Working Group 1 meeting
14. JRC Science for Policy report on the EU's Open Strategic Autonomy by 2040 informing the Commission's 2021 Strategic Foresight Report

2. EXAMINATION UNDER REGULATION (EC) NO 1049/2001

2.1 Full access to document 14

Having examined the requested documents under the provisions of Regulation (EC) 1049/2001, and taking account of the legitimate interests of any third party concerned, we are pleased to inform you that full access can be granted to Documents No 14, which you may find on the European Commission's website².

2.3 No access to Documents from No 1 to 13

² Available on the following link: <https://publications.jrc.ec.europa.eu/repository/handle/JRC125994> .

Having examined the requested document under the provisions of Regulation (EC) 1049/2001 and taking account of the legitimate interests of any third party concerned, we regret to inform you that access cannot be granted to the documents from No 1 to 13, as explained below.

Protection of public interest as regards international relations

Article 4(1)(a), third indent of Regulation 1049/2001 provides that the Commission “*shall refuse access to a document where disclosure would undermine the protection of the public interest as regards [...] international relations*”.

The requested documents from No 1 to 13 concern ongoing discussions between the European Union (hereinafter referred to as ‘EU’) and the United States (hereinafter referred to as ‘US’) in the context of the EU-US Trade and Technology Council (hereinafter referred to as ‘TTC’). There is a concrete risk that the disclosure of the documents in question would damage the mutual trust, essential for the effectiveness of discussions, between the EU and the US, as well as jeopardise the negotiation capacity that the EU has in the ongoing negotiations with the US.

Consequently, a real and non-hypothetical risk exists that the disclosure of documents from No 1 to 13 would undermine the international relations between the EU and the US and, therefore, their disclosure is prevented by the exception, set in in Article 4(1)(a) third indent of Regulation (EC) No 1049/2001, concerning the protection of public interest as regards international relations.

Protection of the institution's decision-making process

Pursuant to Article 4(3), second paragraph 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*”.

Documents No 1, 2 and 12 contain internal European Commission’s considerations, reflections and views for the preparation of the EU’s position in ongoing discussions with the US. Their public disclosure would seriously undermine the Commission’s capacity to carry out internal discussions in independent manner and would seriously damage the integrity of its internal decision-making process.

The exception laid down in Article 4(3) of Regulation (EC) 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. Such an interest must first be a public interest and, second, outweigh the harm caused by disclosure.

In your initial application you did not bring forward any arguments to justify the existence of an overriding public interest in releasing the documents concerning your proposal. Please kindly note that any alleged private interests cannot be taken into account for the purpose of determining whether public access can be granted to the documents under Regulation (EC) 1049/2001. In any event, we have found no elements in this instance which could indicate the existence of such an overriding public interest in

the sense of the Regulation that would outweigh the need to protect the objectivity and independence of the Commission's decision-making process.

Protection of privacy and the integrity of the individuals

According to Article 4(1)(b) of Regulation (EC) 1049/2001, access to documents is refused where disclosure would undermine the protection of "*privacy and the integrity of the individual*", in particular in accordance with European Union legislation regarding the protection of personal data³.

Documents from No 1 to 4 and from No 6 to 13 contain personal data such as names, surnames, functions, telephone numbers and electronic addresses of Commission's officials not having the function of senior management staff and of the third parties identified in the documents. This information clearly constitutes personal data in the meaning of Article 3(1) of Regulation 2018/1725.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '*[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests*'.

According to Article 9(1)(b) of Regulation 2018/1725, the Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Therefore, personal data in the requested documents from No 1 to 4 and from No 6 to 13 cannot be disclosed, due to the protection of privacy and the integrity of individuals, according to Article 4(1)(b) of Regulation (EC) 1049/2001.

3. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation (EC) 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 Secretary-General of the Commission at the following address:

European Commission
Secretary-General

³ 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 ('Regulation 2018/1725').

Unit SG C.1 – Transparency, document management & access to documents

BERL 7/076

B-1049 Brussels

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

Yours sincerely,

Jean-Eric Paquet