



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

The Director General

Brussels, 10 February 2022
JUST.C.4/AV

Naomi Hirst
Global Witness
Rue Belliard 53
1000 Brussels, Belgium

Sent by email: ask+request-10374-36650e01@asktheeu.org

Dear Ms Hirst,

Subject: Your application for access to documents – Ref GestDem No 2021/8097

We refer to your request for access to documents pursuant to Regulation 1049/2001¹, registered on 14/12/2021 under the abovementioned reference number, and our holding reply sent on 12 January.

1. IDENTIFICATION OF RELEVANT DOCUMENTS

Your application concerns “*all documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2021-12-03 between Geneviève Tuts and Lucrezia Busa and Microsoft Corporation.*”

We have identified the following document as falling within the scope of your request: briefing for meeting with Microsoft on 3 December 2021 (Ares(2022)768527).

2. ASSESSMENT OF IDENTIFIED DOCUMENT

Following an examination of the documents, I have come to the conclusion that the abovementioned document may be partially disclosed. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation, notably Article 4(1), third indent and Article 4(3).

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

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 of 31.5.2001, p. 43 (hereafter “Regulation 1049/2001”).

Some of the redacted parts concern the ongoing negotiations with the United States on a successor arrangement to the Privacy Shield. We consider that making the redacted parts public would seriously prejudice the mutual trust between the European Union and the United States, both as regards the ongoing talks on a new transatlantic data transfer framework and other transatlantic files. After the invalidation of the European Commission's adequacy decision 2016/1250 regarding the EU-U.S. Privacy Shield, the European Commission and the U.S. Department of Commerce initiated discussions to evaluate the potential for a strengthened transatlantic data transfer framework to comply with the judgement of the Court of Justice.² Establishing and protecting an atmosphere of mutual trust is a delicate exercise and any breach of that trust can have a serious adverse effect on the ongoing talks as well as future cooperation, including in the context of the implementation of a possible new EU-US data transfer framework. That mutual trust is essential for both sides to speak openly, including on complex issues such as the ones at stake.

Some of the other redacted parts relate to the EU-US Trade and Technology Council. Since there are ongoing negotiations between the EU and the US in this context, there is a concrete risk that the public disclosure of these parts 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 *Veld v Commission*, “[...] *establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise*” (Judgment in *Sophie in’t Veld v Commission* T-301/10, EU:T:2013:135, paragraph 126). Consequently, access to these parts 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.

Second, in accordance with Article 4(3), “*access to a document, drawn up by an institution for internal use [...], 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*”. Some of the redacted parts relate to the ongoing negotiations of the Artificial Intelligence Act. These parts contain sensitive information with regard to the ongoing procedures and negotiations. They also contain considerations, reflections and views of the Commission services. This content is subject to ongoing discussions and deliberations. The Commission services must be free to explore all possible options with regard to ongoing initiatives and procedures. The risk of disclosing sensitive information regarding the Commission services' preliminary views while the relevant decision-making process is still ongoing would deter them from freely expressing their opinions. Speculations and misinterpretations of the public on the views, positions, considerations put forward in an early stage of the decision-making process would affect the exploration of different policy options and expose the Commission to external pressure. Disclosure of these parts of the document would therefore seriously undermine the decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

3. REDACTION OF PERSONAL DATA

In addition to the redactions mentioned above, a complete disclosure of the identified document is prevented by the exception concerning the protection of privacy and the

² See in particular the joint statement of 10/09/2020 of EU Commissioner for Justice Didier Reynders and U.S. Secretary of Commerce Wilbur Ross, https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=684836.

integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because it contains the names/initials of natural persons.

Article 9(1)(b) of the Data Protection Regulation³ 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) of Regulation (EC) No 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. RIGHT TO MAKE A CONFIRMATORY APPLICATION

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Brussels, or by email to: sg-acc-doc@ec.europa.eu

According to standard operational procedures, the reply is usually also sent by registered mail. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 epidemic, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice.

We would therefore appreciate if you could confirm receipt of the present e-mail by replying to: JUST-C4@ec.europa.eu.

Yours faithfully,

(e-signed)
Ana Gallego

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, OJ L 295, 21.11.2018, p. 39.