



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels,
TRADE/SW/C1 (2022) 2003547

Mrs Nina Kurochka
Ketingos g. 36
92307 Klaipeda
Lithuania

***By email only – with request for
email acknowledgment of receipt:***
ask+request-10696-f130d532@asktheeu.org

Subject: Your application for access to documents – GestDem 2022/0740

Dear Mrs Kurochka,

I refer to your email dated 3 February 2022, in which you make a request for access to documents under Regulation (EC) No 1049/2001¹ ('Regulation 1049/2001'), registered on the same date under the above mentioned reference number. I apologise for the delay in our response, which mainly results from the need to consult with other Commission services that received similar requests on your behalf, as well as consultations with representatives from partner countries.

1. SCOPE OF YOUR REQUEST

You request access to *'all negotiation reports, minutes of meetings, transcribes between DG Trade officials and representatives of ACP-Africa, relating to EPA trade relations and negotiations (up until signing iEPAs)'*.

In your email dated 7 February 2022 (reply to our request for clarification of 4 February 2022), you listed more specifically the meeting reports requested, notably:

- [1.] ACP & Ministerial Trade Committee. Brussels, 24.06.2015*
- [2.] Central Africa & EPA Committee. Brussels, December 2017*
- [3.] Central Africa & EPA Committee. Yaounde, 18.02.2019*

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents (Official Journal OJ L 145, 31.5.2001, p. 43).

- [4.] *ESA & EPA Committee. Brussels, 12.12.2016*
- [5.] *ESA & EPA Committee. Antananarivo, 02.10.2017*
- [6.] *ESA & EPA Committee. Brussels, 22.01.2019*
- [7.] *ESA & EPA Committee. Seychelles, 14.01.2020*
- [8.] *SADC & Trade and Development Committee. Brussels, 21.10.2017*
- [9.] *SADC & Trade and Development Committee. South Africa, 16.02.2017*
- [10.] *SADC & Trade and Development Committee. Brussels, 22.02.2018*
- [11.] *SADC & Joint Council. Cape Town, 19.02.2019*
- [12.] *SADC & Trade and Development Committee. Brussels, 19.02.2020*
- [13.] *West Africa & EPA Committee. Abidjan, 04.04.2016*
- [14.] *West Africa & EPA Committee. Abidjan, 21.03.2018*
- [15.] *West Africa & EPA Committee. Accra, 24.01.2018*
- [16.] *West Africa & EPA Committee. Brussels, 11.04.2019*
- [17.] *West Africa & EPA Committee. Brussels, 27.11.2019*
- [18.] *West Africa & EPA Committee. Brussels, 29.11.2019.*

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law², when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001. Such assessment is carried out in a multi-step approach:

- first, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception;
- second, it must examine whether disclosure of the parts of the document in question poses a ‘*reasonably foreseeable and not purely hypothetical*’ risk of undermining the protection of the interest covered by the exception;
- third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Article 4(2) and Article 4(3) of Regulation 1049/2001, the institution is required ‘*to ascertain whether there is any overriding public interest justifying disclosure*’³.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents⁴, ‘*the exceptions to that right [...] must be interpreted and applied strictly.*’⁵

² Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

³ *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in ‘t Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52-64.

⁴ See Regulation 1049/2001, recital (4).

⁵ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

In reply to your request, I can inform you that we have identified the requested documents. Having examined the documents under the applicable legal framework, I am pleased to grant you full access to the documents related to the following meetings:

1. ACP & Ministerial Trade Committee. Brussels, 24.06.2015
11. SADC & Joint Council. Cape Town, 19.02.2019
12. SADC & Trade and Development Committee. Brussels, 19.02.2020
15. West Africa & EPA Committee. Accra, 24.01.2018.

We enclose copies of the documents requested.

We further concluded that **partial access** can be granted to reports **2-7, 13, 14 and 16-18**. In these documents, names and other personal data have been redacted pursuant to article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 2018/1725. Hence, the main content of these documents relevant to your request is accessible.

With regard to **reports 8, 9 and 10, access can unfortunately not be granted** since they are entirely covered by the exception set out in article 4(1)(a) third indent of Regulation 1049/2001 (protection of the public interest as regards international relations).

The following sections set out the applicable reasoning in more detail.

2.1. Protection of privacy and integrity of the individual (documents 2-7, 13, 14 and 16-18)

With regard to documents 2-7, 13, 14 and 16 – 18 a partial release is possible, but a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, because they contain the following personal 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;
- handwritten signatures/abbreviated signatures of natural persons.

More specifically, documents relating to the following meetings are concerned and partially released to you with the respective personal data redacted:

2. Central Africa & EPA Committee. Brussels, December 2017
3. Central Africa & EPA Committee. Yaounde, 18.02.2019
4. ESA & EPA Committee. Brussels, 12.12.2016
5. ESA & EPA Committee. Antananarivo, 02.10.2017
6. ESA & EPA Committee. Brussels, 22.01.2019
7. ESA & EPA Committee. Seychelles, 14.01.2020
13. West Africa & EPA Committee. Abidjan, 04.04.2017 *[we understand your reference to '04.04.2016' as containing a typo]*
14. West Africa & EPA Committee. Abidjan, 21.03.2018

16. West Africa & EPA Committee. Brussels, 11.04.2019
17. West Africa & EPA Committee. Brussels, 27.11.2019
18. West Africa & EPA Committee. Brussels, 29.11.2019

Under Article 4(1)(b) of Regulation 1049/2001, access to a document has to be refused, if its 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 data'*.

The currently applicable legislation in this field is 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/EC⁶ ('Regulation 2018/1725').

Article 3(1) of Regulation 2018/1725 states that personal data *'means any information relating to an identified or identifiable natural person [...]'*. The Court of Justice has indicated that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.⁷ Names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are thus to be considered personal data.⁸

Article 9(1)(b) of Regulation 2018/1725 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 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 as 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.

⁶ OJ L 205, 21.11.2018, p. 39.

⁷ See judgment in *Nowak*, C-434/16, EU:T:2018:560, points 33 to 35.

⁸ Judgment in *Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, T-39/17, EU:T:2018:560, points 43 and 44.

2.2. Protection of the public interest as regards international relations (documents 8, 9 and 10)

Article 4(1)(a), third indent, of Regulation 1049/2001 provides that *‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: the public interest 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 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’*⁹. 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’*¹⁰.

The General Court found that *‘it is possible that the disclosure of European Union positions in international negotiations could damage the protection of the public interest as regards international relations’ and ‘have a negative effect on the negotiating position of the European Union’ as well as ‘reveal, indirectly, those of other parties to the negotiations’*¹¹. Moreover, *‘the positions taken by the Union are, by definition, subject to change depending on the course of those negotiations and on concessions and compromises made in that context by the various stakeholders. The formulation of negotiating positions may involve a number of tactical considerations on the part of the negotiators, including the Union itself. In that context, it cannot be precluded that disclosure by the Union, to the public, of its own negotiating positions, when the negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating capacity of the Union’*¹².

The disclosure of documents related to the following meetings would undermine the protection of the public interest as regards international relations and access can therefore not be granted:

8. SADC & Trade and Development Committee. Brussels, 21.10.2017
9. SADC & Trade and Development Committee. South Africa, 16.02.2017
10. SADC & Trade and Development Committee. Brussels, 22.02.2018.

⁹ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35.

¹⁰ Judgment in *Council v Sophie in ‘t Veld*, C-350/12P, EU:C:2014:2039, paragraph 63.

¹¹ Judgment in *Sophie in ‘t Veld v Commission*, T-301/10, EU:T:2013:135, paragraphs 123-125.

¹² *Id.*, paragraph 125.

Releasing these documents that include the positions of the different parties involved (or parts therefore) would undermine the trust established between the EU and the participating SADC countries, which would thus have a negative impact on the EU's international relations with these countries. More specifically, our SADC partners did not agree to release these documents, thus releasing those would create mistrust in our relations. Indeed, the exception of Article 4(1)(a) third indent is preventing a release of these documents, so as to protect the international relations between the participating SADC countries and the EU.

3. POSSIBILITY OF CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 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' (unit SG.C.1)

BERL 7/076

1049 Brussels

Belgium

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

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'S. Weyand', with a stylized flourish at the end.

Sabine WEYAND

Enclosures: 15 documents fully or partially released