



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Director-General

Brussels, 5 August 2022
JUST.C.4/AV

Nienke Palstra,
Global Witness
Rue Belliard 53
1000 Bruxelles
Belgium

Sent by e-mail to: ask+request-11309-fbfc1bd8@asktheeu.org

Subject: Your application for access to documents – GESTDEM 2022/3015

Dear Ms. Palstra,

We refer to your request for access to documents of 24 May 2022, registered under the above-mentioned reference number.

You request access to “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 2022-04-26 between Didier Reynders and ITI - The Information Technology Industry Council”.

We have identified the following documents that corresponds to your request:

1. Briefing for meeting with ITI (Ares(2022)5582555);
2. E-mail exchange with ITI (Ares(2022)840658).

Assessment of identified documents

Following an examination of the document, I have come to the conclusion that document 1 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 providing that *"the institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations."*

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 after the invalidation of the EU-U.S. Privacy Shield by the Court of Justice of the European Union 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 are in negotiations on a strengthened transatlantic data transfer framework to comply with the judgement of the Court of Justice. In light of these ongoing talks, it is important to protect the credibility of the European Commission as a negotiating partner. 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.

Protection of personal data

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 (EC) No 1049/2001, because it contains personal data.

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, 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.

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

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.

We would 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