



**EUROPEAN COMMISSION**

Directorate-General for Trade

Directorate B - Services and Investment, Intellectual Property and Public Procurement  
**Services**

Brussels, 31 October 2017

TRADE B1/NS/lj/4839800

***By registered letter with acknowledgment of receipt:***

Max Bank  
on behalf of LobbyControl  
LobbyControl  
Am Justizzentrum 7  
50939 Cologne  
Germany

***Advance copy by email:***

[XXXXXXXXXXXXXXXXXXXXXXXXXXXX@XXXXXXXXX.XXX](mailto:XXXXXXXXXXXXXXXXXXXXXXXXXXXX@XXXXXXXXX.XXX)

**Subject: Your application for access to documents - Ref GestDem No 2017/4453 – Batch I**

Dear Mr Bank,

We refer to your e-mail of 31 July 2017 in which you made a request for access to documents under Regulation (EC) No 1049/2001 regarding public access to documents<sup>1</sup> ("Regulation 1049/2001") and your e-mail of 14 September 2017 in which you agreed to our proposal to send out the reply to your request in two batches. We would apologise for the delay in processing your request, which results from the substantial number of on-going access to documents applications and the relatively broad scope of this specific request.

**1. SCOPE OF YOUR REQUEST**

You requested the following documents:

*1) a list of meetings of DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and DigitalEurope as well as the European Services Forum (ESF) in which the Trade in Services Agreement (TiSA) was discussed (between January 2011 and today, i.e. 31.07.2017);*

*2) minutes and other reports of these meetings;*

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<sup>1</sup> 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. 43–48

3) *all correspondence (including emails) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and DigitalEurope as well as the European Services Forum (ESF) regarding the Trade in Services Agreement (TiSA) (between January 2011 and today, i.e. 31.07.2017).*

We have considered your request in two parts:

- **The 1<sup>st</sup> part** are *"a list of meetings of DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and DigitalEurope as well as the European Services Forum (ESF) in which the Trade in Services Agreement (TiSA) was discussed (between January 2011 and today, i.e. 31.07.2017)", as well as the "minutes and other reports of these meetings"; and*
- **The 2<sup>nd</sup> part** are *"all correspondence (including emails) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and DigitalEurope as well as the European Services Forum (ESF) regarding the Trade in Services Agreement (TiSA) (between January 2011 and today, i.e. 31.07.2017)".*

In relation to the 1<sup>st</sup> part, we have identified in total **22 meetings and corresponding documents** that are relevant to your request. As regards the 2<sup>nd</sup> part of your request, 11 additional documents have been identified.

Concerning the 1<sup>st</sup> part of your request, in accordance with the Code of good administrative behaviour for staff of the European Commission in their relations with the public<sup>2</sup>, a list of the 22 meetings was created. This list is enclosed in Annex I of this reply.

As part of Batch I, we assessed **in total 31 documents**: 20 related to part one of your request and 11 linked to part two of your request. Two additional documents linked to part one of your request (two meeting reports for the meetings number 17 and 20 of the Annex I) will be assessed together with the other remaining documents included in Batch II.

The list of all these 31 documents identified and assessed in Batch I is enclosed in Annex II. For each document the list provides a registration number, date and the name of the organization, and it indicates whether parts are withheld and, if so, under which grounds pursuant to Regulation 1049/2001.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

In accordance with settled case law,<sup>3</sup> 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:

1. 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;

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<sup>2</sup> [https://ec.europa.eu/info/sites/info/files/code-of-good-administrative-behaviour\\_en.pdf](https://ec.europa.eu/info/sites/info/files/code-of-good-administrative-behaviour_en.pdf)

<sup>3</sup> 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.

2. second, it must examine whether disclosure of the parts of the document in question pose a “*reasonably foreseeable and not purely hypothetical*” risk of undermining the protection of the interest covered by the exception;
3. third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Articles 4.2 and 4.3 of Regulation 1049/2001, the institution is required “*to ascertain whether there is any overriding public interest justifying disclosure*”.<sup>4</sup>

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents,<sup>5</sup> “*the exceptions to that right [...] must be interpreted and applied strictly*”.<sup>6</sup>

### **With regard to the 1<sup>st</sup> part of your request**

Having carefully examined the documents identified above in light of the applicable legal framework, I am pleased to release the **20 documents**<sup>7</sup> of the first part of your request (documents number 1-20 of the Annex II). Copies of these documents are enclosed.

In all released documents, names and other personal data have been removed pursuant to **Article 4.1(b)** of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001 (“Regulation 45/2001”).<sup>8</sup> Nevertheless, the main content of these documents is accessible. Moreover, the names of senior managers of the Commission at Director level or above, Cabinet members, as well as names of senior managers of private entities (e.g. Director, President, Vice-President) and of public figures (e.g. member of Parliament, Ambassador), are disclosed.

As regards these **documents 1-20**, please also note that in addition to personal data, parts of the documents **1, 2, 5-9, 11-18** and **20** have been marked “**out of scope**” as they concern topics that are unrelated to the subject matter of your application.

### **With regard to the 2nd part of your request**

I am also pleased to release all documents included in Batch I related to the second part of your request (documents no 21 – 31). Copies of these documents are enclosed. In all released documents, names and other personal data have been removed pursuant to **Article 4.1(b)** of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001 (“Regulation 45/2001”).<sup>9</sup>

The reasons justifying the application of the exception are set out below in Section 2.1.

<sup>4</sup> *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52 and 64.

<sup>5</sup> See Regulation (EC) No 1049/2001, recital (4).

<sup>6</sup> Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

<sup>7</sup> Please note that documents related to meetings no 17 and 20 of the Annex I, that is, meeting of the 29/01/2016 with International Relations Committee of Business Europe and of 20/07/2016 with Digital Europe will be assessed in the Batch II and that the conclusion concerning their release is independent of the assessment provided for the documents included in this Batch.

<sup>8</sup> Regulation (EC) No 45/2001 of the European Parliament and the of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1.

<sup>9</sup> Regulation (EC) No 45/2001 of the European Parliament and the of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1.

## 2.1. Protection of privacy and integrity of the individual

Article 4.1(b) of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.”

The Court of Justice has ruled that “where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data” “the provisions of Regulation 45/2001, of which Articles 8(b) and 18 constitute essential provisions, become applicable in their entirety.”<sup>10</sup>

Article 2(a) of Regulation 45/2001 provides that “‘personal data’ shall mean any information relating to an identified or identifiable natural person [...]”. The Court of Justice has confirmed that “there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of ‘private life’<sup>11</sup> and that “surnames and forenames may be regarded as personal data”<sup>12</sup> including “names of the staff of the institutions”.<sup>13</sup>

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish “the necessity of having the data transferred” and additionally “if there is no reason to assume that the legitimate interests of the data subjects might be prejudiced”. The Court of Justice has clarified that “it is for the person applying for access to establish the necessity of transferring that data.”<sup>14</sup>

All of the documents listed in Annex II contain names, phone and office numbers, job titles and other personal information that allows the identification of natural persons. Signatures have also been removed to avoid the risk of forgery.<sup>15</sup>

I note that you have not established the necessity of having these personal data transferred to you. Moreover, it cannot be assumed, on the basis of the information available, that disclosure of such personal data would not prejudice the legitimate interests of the persons concerned. Therefore, these personal data shall remain undisclosed in order to ensure the protection of the privacy and integrity of the individuals concerned.

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 Secretary-General of the Commission at the following address:

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<sup>10</sup> Judgment in *Guido Straek v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 101; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraphs 63 and 64

<sup>11</sup> Judgment in *Rechnungshof v Rundfunk and Others*, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

<sup>12</sup> Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

<sup>13</sup> Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111

<sup>14</sup> Judgment in C-127/13 P *Guido Straek v Commission*, EU:C:2014:2250, paragraph 107 and judgment in C-28/08 P *Commission v Bavarian Lager*, EU:C:2010:378, paragraph 77.

<sup>15</sup> There are additional documents that feature personal data, such as signatures. However these have not been redacted where the documents are publicly available online

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Yours sincerely,

Christophe KIENER

Enclosures:

Annex 1 - List of meetings concerning part 1 of the request

Annex 2 - List of documents assessed in Batch I (concerning part one and two of the request)

Released documents