



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate B- Services and Investment, Intellectual Property and Public Procurement
Services
The Head of Unit

Brussels, 12 January 2018
TRADE B1/NS/lj 5062005

By registered letter with acknowledgment of receipt:

Max Bank
LobbyControl
Am Justizzentrum 7
50939 Cologne
Germany

Advance copy by email:

ask+request-4525-ea313204@asktheeu.org

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

Dear Mr Bank,

I 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 ("Regulation 1049/2001"), registered on the same date under the reference number GestDem 2017/4453. I refer also to your e-mail of 14 September 2017 in which you agreed that due to the large number of documents identified as a result of your request, the reply would be provided in two parts.

We would like to apologise for the delay in processing your request, which is due to a large number of access to documents requests being dealt by DG TRADE as well as the complexity and broad scope of your application.

In particular, you requested access to:

- 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;*
- 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).*

On 31 October 2017, you received a first batch of documents that were identified under points 1 and 2 of your request (Ares(2017)5324690). This reply contains a second and last batch of 14 documents that fall under point 3 of your request.

I am glad to inform you that access can be granted to the content of these documents. A list is provided in Annex 1,¹ and copies of the documents are enclosed. However, some personal data (e.g. names, job titles, telephone numbers, signatures) have been withheld in documents 1, and 3-14, in accordance with Article 4(1)(b) of Regulation 1049/2001. The legal reasoning underlying the protection of these personal data is provided below.

In line with the Commission's commitment to ensure transparency and accountability², the names of Members of Cabinet, senior management of the Commission at the Director level or above, as well as names of senior managers of private entities (e.g. Director, President, Vice-President) and of public figures (e.g. members of Parliament and Ambassadors) are disclosed.

Document 2, which is a letter dated 12 November 2014 from Digital Europe to the Commission (Ares(2014)3819635), is publicly available on the website of Commissioner Malmström,³ and therefore a copy has not been included in this reply.

Some parts of documents 1, 4, 5, 9, 13 and 14 have been marked "out of scope" as they concern topics that are unrelated to the subject matter of your application.⁴

* * *

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 applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and 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 data⁵.

¹ This list was created in accordance with the Code of Good Administrative Behaviour, (OJ L267, 20.10.2000, p. 64).

² See Commission decisions C(2014) 9051 and C(2014) 9048 of 25 November 2014.

³ <https://ec.europa.eu/carol/index-iframe.cfm?fuseaction=download&documentId=090166e59b024173&title=digital.pdf>

⁴ As regards the annex to document 11, which is a letter of ESF dated 29 April 2016, although parts fall outside the scope of your request, they have been made available as the letter is published online.

⁵ OJ L 8, 12.1.2001, p. 1. 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” (see judgment in *Guido Strack 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).

Article 2(a) of Regulation 45/2001 provides that *"personal data' shall mean any information relating to an identified or identifiable natural person [...]"*. In this respect, the jurisprudence of the EU Courts has clarified that activities of a professional nature may fall within the notion of *'private life'*⁶ and that *"surnames and forenames may be regarded as personal data"*⁷, including names of the staff of the institutions⁸.

In accordance with Article 8(b) of Regulation 45/2001 personal data may 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"*⁹. I consider on the basis of your application, that these conditions have not been met. Therefore, in order to ensure the protection of the privacy and integrity of the individuals concerned, the personal data in question cannot be transferred.

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:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
BE-1049 Bruxelles

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

Yours sincerely,

Christophe KIENER

Enclosures:

Annex - List of documents
Released documents

⁶ 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.

⁷ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

⁸ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

⁹ The Court of Justice has clarified that *"it is for the person applying for access to establish the necessity of transferring that data"* (C-127/13 P, paragraph 107; see also judgment in C-28/08 P *Commission v Bavarian Lager*, EU:C:2010:378, paragraph 77).