



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels,
TRADE/SW/C.2 (2020)1802068

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

Mr Bart-Jaap Verbeek
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Subject: Your application for access to documents – Ref GestDem 2019/5336

Dear Mr Verbeek,

I refer to your request of 8 September 2019 for access to documents under Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001"), as registered under the above mentioned reference number.

Please accept our apologies for the delay in answering your request, which is mainly due to the high number of requests for access to documents being processed at the same time by the Directorate-General for Trade (hereinafter 'DG TRADE').

1. SCOPE OF YOUR REQUEST

Under the present request GestDem 2019/5336, you are requesting access to **documents numbered 1 to 19 as well as 166 to 171** from the list submitted to you by the European Commission on 21 September 2018 as part of your original request GestDem 2018/4306.

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, OJ L 145, 31.5.2001, p. 43.

Like the previous requests related to request GestDem 2018/4306, the present request concerns:

1) a list of meetings between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and stakeholders, including trade unions, civil society groups, as well as representatives of individual companies, industry associations, law firms, academics, public consultancies and think tanks in which the EU-Indonesia Free Trade Agreement was discussed (between January 2016 and today);

2) minutes and other reports of these meetings;

3) all correspondence (including emails, letters, faxes) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and stakeholders, including trade unions, civil society groups, as well as representatives of individual companies, industry associations, law firms, academics, public consultancies as well as think tanks regarding the EU-Indonesia Free Trade Agreement (between January 2016 and today);

4) all correspondence (including emails, letters, faxes) and documents (including briefings, memo's, non-papers) shared between DG Trade officials and/or the Commissioner and the Cabinet in which the EU-Indonesia Free Trade Agreement was discussed (between January 2016 and today).

The present request therefore assesses a total of 25 documents.

For ease of reference, a list of the documents falling within the scope of your request is enclosed in Annex 1. For each of them the list provides a description and indicates whether parts or entire documents are withheld and if so, on which grounds pursuant to Regulation 1049/2001. Copies of the accessible documents are enclosed.

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 the institution 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*”³.

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 and 64.

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.

Having examined the requested documents under the applicable legal framework, I am pleased to convey that the content of **documents 7, 11, 12, 14, 16, 167 and 170** is fully accessible with the exception of elements concerning the protection of privacy and integrity of the individual, which were redacted pursuant to Article 4(1)(b) of Regulation 1049/2001, and of elements that fall outside the scope of your request (in respect of **document 7**).

Partial access is granted to **documents 1, 2, 3, 4, 5, 6, 8, 9 and 171** where, in addition to personal data and of elements that fall outside the scope of your request (in respect of **documents 2, 5, 6**), some information was redacted as it is covered by either the exceptions set out in Article 4(1)(a) third indent of Regulation 1049/2001 (protection of the public interest as regards international relations) and/or Article 4(2) first indent of Regulation 1049/2001 (protection of commercial interest of a natural or legal person).

No access is granted to **documents 13, 166 (a part falling within the scope) and 169**. The information contained therein cannot be disclosed. The legal basis for denying access to the information is set out in Article 4(1)(a) third indent of Regulation 1049/2001 (protection of the public interest as regards international relations) and/or Article 4(2) first indent of Regulation 1049/2001 (protection of commercial interest of a natural or legal person). Some information in these documents is also protected pursuant to Article 4(1)(b) of Regulation 1049/2001 (protection of privacy and integrity of the individual).

In addition, **documents 10, 15, 17, 18, 19, nearly entire document 166 and 168** are not disclosed, as they entirely fall outside the scope of your request.

The reasons justifying the application of the exceptions are set out below in Sections 2.1, 2.2 and 2.3. Section 3 contains an assessment of whether an overriding public interest in the disclosure exists and section 4 considers whether partial access could be granted to the documents withheld.

2.1 Protection of the public interest as regards international relations

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 No 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*

⁴ Regulation (EC) No 1049/2001, recital (4).

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

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".⁶ 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"⁷.

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".⁸ 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".⁹*

The EU is currently negotiating a free trade agreement with Indonesia. More generally, under these circumstances it remains important for the EU to retain a certain margin of manoeuvre to shape and adjust its tactics, options and positions in order to safeguard the EU's interests. Furthermore, exposing internal views and considerations would weaken the negotiating capacity of the EU as well as, in general, the protection of the public interest as regards international relations.

Certain passages in **documents 1, 2, 3, 4, 5, 6, 8, 9 and a part of document 166** have therefore been withheld as they reveal such views. As such, this information indirectly reveals negotiating priorities, strategic objectives and tactics, which the EU could consider pursuing in its ongoing trade negotiations.

In addition, the entire **documents 13, and 169** are not disclosed on the same grounds.

2.2 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 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

⁶ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

⁷ Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

⁸ Judgment in *Sophie in't Veld v Commission*, T-301/10, EU:T:2013:135, paragraphs 123-125.

⁹ *Id.*, paragraph 125.

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 ('Regulation 2018/1725').

All documents partially released contain personal information, such as names, e-mail addresses or telephone numbers that allow the identification of natural persons as well as other personal information, like signatures.

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of Justice has specified 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.¹⁰

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹¹, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable¹².

Pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if "[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests". Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

¹⁰ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

¹¹ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

¹² Whereas this judgment specifically related to 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 data, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

In your application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, 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.

However, in line with the Commission's commitment to ensure transparency and accountability, the names of the Members of Cabinet and the names of the senior management of the Commission (Director level and above) are disclosed, as well as the names of individuals who are public figures and are acting in their public capacity (Heads of State, Ministers, Ambassadors, MEPs, etc.).

2.3 Protection of commercial interest

Article 4(2) first indent, of Regulation 1049/2001 provides that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] commercial interests of a natural or legal person [...] unless there is an overriding public interest in disclosure".

While not all information concerning a company and its business relations can be regarded as falling under the exception of Article 4(2) first indent¹³, it appears that the type of information covered by the notion of commercial interests would generally be of the kind protected under the obligation of professional secrecy¹⁴. Accordingly, it must be information that is "*known only to a limited number of persons*", "*whose disclosure is liable to cause serious harm to the person who has provided it or to third parties*" and for which "*the interests liable to be harmed by disclosure must, objectively, be worthy of protection*"¹⁵.

Some passages in **documents 3 and 171** have been withheld because they contain business sensitive information pertaining to an organisation, a company or group of companies, including details about commercial priorities, objectives, strategies, concerns and interests that they pursue in their respective business domains in the Indonesian market.

¹³ Judgment in *Terezakis v Commission*, T-380/04, EU:T:2008:19, paragraph 93.

¹⁴ See Article 339 of the Treaty on the Functioning of the European Union.

¹⁵ Judgment in *Bank Austria v Commission*, T-198/03, EU:T:2006:136, paragraph 29.

In addition, the entire **document 13** is not disclosed on the same grounds.

All this information was shared with the Commission in order to provide useful input and support for the EU's objectives in its trade negotiations. Companies typically share information with the Commission so that the latter can determine how to best position itself in the negotiations in order to protect its strategic interests and those of its industry, workers and citizens. Ensuring that the Commission continues to receive access to this information and that the industry engages in open and frank discussions with the Commission, are key elements for the success of the internal and external policies of the EU and its international negotiations. Sharing publicly specific business related information that companies share with the Commission may prevent the Commission from receiving access to such information in the future.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(2) first indent of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. Such an interest must, first, be public and, secondly, outweigh the harm caused by disclosure. Accordingly, we have also considered whether the risks attached to the release of the withheld parts of **documents 3 and 171** are outweighed by the public interest in accessing the requested documents. We have not been able to identify any such public interest capable of overriding the commercial interests of the companies concerned. The public interest in this specific case rather lies on the protection of the legitimate confidentiality interests of the stakeholders concerned to ensure that the Commission continues to receive useful contributions for its ongoing negotiations with third countries without undermining the commercial position of the entities involved.

The entirety of **document 13** is withheld on the same grounds.

4. PARTIAL ACCESS

Pursuant to Article 4(6) of Regulation 1049/2001 "*if only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released*". Accordingly, we have also considered whether partial access could be granted to **documents 9, 13, 166 and 169**. However, and after a careful review, we have concluded that this is not possible.

The content of those documents is entirely covered by the exceptions described above and it is thus impossible to disclose any parts of these documents without undermining the protection of the interests identified in this reply.

Access to Documents GestDem 2019/5336

Annex 1: List of documents

No	Date	Title	Disclosure	Justification under Reg. 1049/2001	Registration number
1	03-03-2016	Briefing for Commissioner Malmströms meeting with Indonesian Minister on 3/3/2016	partial	4(1)(a) + 4(1)(b)	Ares(2020)1582741
2	05-04-2016	Commissioner Malmström meeting with Indonesian Trade minister 05/04/2016	partial	4(1)(a) + 4(1)(b) + out of scope	Ares(2020)1582745
3	21-04-2016	Lunch with President of Indonesia and European CEOs - VP Katainen and Csr Malmström 21/04/2016	partial	4(1)(a) + 4(1)(b) + 4(2)	Ares(2020)1582747
4	29-11-2016	Meeting Indonesian Minister of Foreign Affairs, Ms Retno Mansoudi 29/11	partial	4(1)(a) + 4(1)(b)	Ares(2016)7089964
5	09-03-2017	Commissioner Malmströms mission to Manila, Philippines. (9-10/03/2017)	partial	4(1)(a) + 4(1)(b) + out of scope	Ares(2017)1579585
6	18-07-2017	CM meeting with Darmin Nasution, Coordinating Minister for Economic Affairs	partial	4(1)(a) + 4(1)(b) + out of scope	Ares(2017)3860260
7	02-10-2017	Commissioner Malmström meeting with a delegation from EU-ASEAN Business Council	partial	4(1)(b) + out of scope	Ares(2017)5048936
8	28-02-2018	Commissioners mission to Singapore (EU-ASEAN consultations)	partial	4(1)(a) + 4(1)(b)	Ares(2018)1415713
9	23-04-2018	Meeting with H.E. Luhut Binsar Pandjaitan, Coordinating Minister of Maritime Affairs of Indonesia.	partial	4(1)(a) + 4(1)(b)	Ares(2018)2425293
10	19-02-2016	RE: Indonesia GI update	no access	out of scope	Ares(2016)874181
11	23-03-2016	Invitation letter from Commissioner Malmstrom to Minister Lembong for EU-indonesia FTA scoping meeting of 04-05/04/2016	partial	4(1)(b)	Ares(2016)1432637
12	14-04-2016	FYI/phone call on Indonesia with representative of tyres industry, 14 April 2016	partial	4(1)(b)	Ares(2016)1770013
13	16-04-2016	Letter to Commissioner Malmstrom re: Doing Business Issues in Indonesia	no access	4(1)(a) + 4(1)(b) + 4(2)	Ares(2016)1818293
14	25-05-2016	Reply to: Letter to Commissioner Malmstrom re: Doing Business Issues in Indonesia	partial	4(1)(b)	Ares(2016)2431341
15	30-05-2016	RE: Meeting with the Executive Committee of the Nurnberg Chamber of Commerce and Industry (CCI/DIHK) - 27 May 2016	no access	out of scope	Ares(2016)2490317
16	15-07-2016	Emails exchanged with European Cocoa Association 2016	partial	4(1)(b)	Ares(2016)3489735
17	28-08-2016	Re: Follow up to our earlier discussions re CEPA kick off scheduling	no access	out of scope	Ares(2016)5720861
18	30-08-2016	Official letter IEU CEPA kick off meeting from Mr Djatmiko Bris Witjaksoro to Ms. Helena Konig	no access	out of scope	Ares(2016)4987023
19	06-09-2016	RE: Official letter IEU CEPA kick off meeting from Mr Djatmiko Bris Witjaksoro to Ms. Helena Konig	no access	out of scope	Ares(2016)5064363
166	06-06-2018	Report Meeting Mia Åsenius with T&E, 5 June 2018	no access	4(1)(a) + 4(1)(b)+out of scope	Ares(2018)2949821
167	08-06-2018	Report - Meeting with a Norwegian environmental NGO - palm oil + FTAs Indonesia and Malaysia	partial	4(1)(b)	Ares(2018)3010474
168	22-06-2018	Report - Meeting with Law Society England and Wales	no access	out of scope	Ares(2018)3309489
169	04-07-2018	Report of a meeting on deforestation and palm oil with NGO Auriga, 4 July 2018	no access	4(1)(a) + 4(1)(b)	Ares(2018)3559600
170	20-07-2018	Meeting with Eurogroup for Animals on the EU-Indonesia FTA, Wed 18 July 2018	partial	4(1)(b)	Ares(2018)3877250
171	17-08-2018	fyi Meeting with Nike, 16 August 2018	partial	4(1)(b) + 4(2)	Ares(2018)4276733

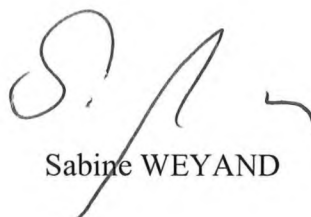
In case you disagree with the assessment contained in this reply you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

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:

Secretary-General
Transparency, Document Management & Access to Documents unit SG-C-1
European Commission
BERL 7/76
1049 Brussels

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

Yours sincerely,



Sabine WEYAND

Enclosures: - Annex 1: List of documents
 - Documents plus annexes including fully and partially released documents