



## EUROPEAN COMMISSION

Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 of the TEU

Deputy Chief Negotiator

Brussels, **11 03 19**  
TF50(2019)

*By registered mail with AR*

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**Subject: Your application for access to documents – Ref GestDem No 2019/0491**

Dear Mr Petitjean,

We refer to your application of 25/01/2019 registered on 28/01/2019 under the above mentioned reference number, by which you make a request pursuant to Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>.

You requested access to:

- “1. a list of all lobby meetings held by staff on the Taskforce with third parties since 1 November 2017*
- 2. all agendas, minutes/ notes of meetings, and position papers or other briefing papers from these meetings plus a note of the topic of each meeting”*

Please find enclosed a list of the meetings held by the members of the Taskforce from 1 November 2017 until 25 January 2019. The list includes the date, the topic of the meeting and the organisation.

With reference to your request for all agendas, minutes / notes of meetings, and position papers or other briefing papers from these meetings, we have to inform you that disclosure

<sup>1</sup> Official Journal L145 of 31.05.2001, p.43.

of these documents is prevented by exception based on Article 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property), Article 4(1)(a), third indent (protection of the public interest as regards international relations) and Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001. The detailed reasons are set out hereafter.

### **1.1. Protection of commercial interests of a natural or legal person, including intellectual property**

Article 4(2), first indent of Regulation 1049/2001 stipulates 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, including intellectual property, [...] unless there is an overriding public interest in disclosure'.

The General Court found that documents, the disclosure of which would seriously undermine the commercial interests of a legal person, 'contain commercially sensitive information relating, in particular, to the business strategies of the undertakings concerned or their commercial relations or where those documents contain information particular to that undertaking which reveal its expertise'<sup>2</sup>.

In the framework of the meetings, for which you requested the minutes and other relevant documents, the organisations shared with the European Commission their concerns and strategies that they pursue to mitigate the consequences of the United Kingdom's withdrawal from the European Union.

Public disclosure of these documents would damage these organisations' commercial interests, as it would put into the public domain confidential commercial information.

Article 339 of the Treaty on the Functioning of the European Union requires members of the staff of the EU institutions to refrain from disclosing 'information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their costs components'.

### **1.2. Protection of the public interest as regards international relations**

Article 4(1)(a), third indent of Regulation 1049/2001 provides that the 'institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations [...]'.

The General Court has acknowledged that 'the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest and, consequently, [...] the Court's review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exceptions relating to the

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<sup>2</sup> Judgments of 5 February 2018 in Case T-718/15 *PTC Therapeutics Ltd v. European Medicines Agency*, EU:T:2018:66, paragraphs 84-85 and in Case T-729/15 *MSD Animal Health Innovation GmbH v European Medicines Agency*, EU:T:2018:67, paragraphs 67– 68 and also confirmed by judgment of 11 July 2018 in Case T-643/13, *Rogesa v. Commission*, EU:T:2018:423, paragraph 70.

public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers<sup>3</sup>.

The meetings with stakeholders took place in the margin of the negotiations on the United Kingdom's withdrawal from the European Union, in order to enable the European Commission to gather evidence of EU-wide impact of United Kingdom's withdrawal on a given area.

The meetings provided a platform for presenting the confidential views and concerns of the organisations. Disclosure of such discussions would give rise to undue speculation and premature conclusions on the very sensitive issue of the impact of the withdrawal of the United Kingdom from the European Union. There is a risk that the content of the discussions, if disclosed, would be used as part of the political debate and wrongly interpreted as the European Commission's and the organisations' public position on the United Kingdom's withdrawal from the European Union.

Furthermore, if confidential information submitted by relevant stakeholders to the European Commission were to be released, there would be a clear risk that stakeholders would not share similar information in the future. This means that the European Commission would be deprived of the possibility to obtain relevant information allowing it to objectively assess its negotiating options, thus exercising effectively the responsibility assigned to it as negotiator on behalf of the European Union.

Public disclosure would thus risk upsetting the negotiations on the future relationship. This would clearly undermine the public interest as regards international relations.

The General Court has acknowledged 'that initiating and conducting negotiations in order to conclude an international agreement fall, in principle, within the domain of the executive, and that public participation in the procedure relating to the negotiation and the conclusion of an international agreement is necessarily restricted, in view of the legitimate interest in not revealing strategic elements of the negotiations'<sup>4</sup>.

### **1.3. Protection of privacy and the integrity of the individual**

Article 4(1)(b) of Regulation 1049/2001 provides that 'access to a document is refused 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 regard to the processing of personal data by the Union institutions, bodies, offices and

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<sup>3</sup> Judgment of 25 April 2007 of the General Court, at the time Court of First Instance, in Case T-264/04, *WWF European Policy Programme v Council of the EU*, EU:T:2007:114, paragraph 40.

<sup>4</sup> Judgment of 11 July 2018, *Client Earth v Commission*, quoted above, paragraph 56.

agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>5</sup> ('Regulation 2018/1725').

The requested documents contain information such as names, functions, descriptions of areas of responsibility and contact details pertaining to staff members of the European Commission, who do not occupy any senior management position, as well as the participants from the external organisations, who are not the latter's main representatives.

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.

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.

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  
Unit C.1. 'Transparency, Document Management and Access to Documents'  
BERL 7/076  
B-1049 Bruxelles, or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Sabine Weyand

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<sup>5</sup> Official Journal L 205 of 21.11.2018, p. 39.