



EUROPEAN COMMISSION

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Belgium

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2019/0622**

Dear Mr Teffer,

I refer to your e-mail of 25 April 2019, registered on the same day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

**1. SCOPE AND BACKGROUND TO YOUR REQUEST**

In your initial application of 31 January 2019, addressed to the Directorate-General for Economic and Financial Affairs, you requested access to:

‘all documents - including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations - related to meetings [C]ommissioner Pierre Moscovici has held at the World Economic Forum this year, including but not limited to his meetings with

- Bank of America Merrill Lynch;
- JPMorgan Chase & Co;
- Booking.com B.V.;

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

– S&P Global Inc.’

On 25 March 2019, you received a reply from the services of the Directorate-General for Economic and Financial Affairs with regard to your application. On 1 April 2019, you submitted a confirmatory application against that reply.

On 15 April 2019, the Directorate-General for Economic and Financial Affairs sent you a revised reply to your application, validated at the appropriate level within the Directorate-General in question. In its additional reply, the Directorate-General for Economic and Financial Affairs identified one document as falling within the scope of your request, namely:

– ‘Davos readout’, World Economic Forum Annual Meeting 2019, 24 January 2019, reference Ares(2019)3878175 (hereafter ‘document 1’) and

partially refused access to it on the grounds of Article 4(1)(a), fourth indent (protection of the public interest as regards the financial, monetary or economic policy of the Union or a Member State) and Article 4(3), first subparagraph (protection of the decision-making process) of Regulation (EC) No 1049/2001.

As the Directorate-General for Economic and Financial Affairs had sent you a revised reply to your application, the Secretariat-General closed that confirmatory application on 17 April 2019. In its closing letter, the Secretariat-General informed you about your right to submit a new confirmatory application if you did not agree with the position of the Directorate-General for Economic and Financial Affairs.

On 25 April 2019, you submitted a new confirmatory application, requesting the review of the position taken by the Directorate-General for Economic and Financial Affairs on 15 April 2019. In your confirmatory application, you stated that ‘[you] find it difficult to believe that [document 1] was the only one procedure related to the Davos meetings. It seems more likely that this e-mail, which summarised several meetings, was based on other more elaborate documents [...]’.

Following your confirmatory application, the European Commission has identified the following additional documents as falling within the scope of your request:

- ‘Artificial Intelligence’, World Economic Forum Annual Meeting 2019, reference Ares(2019)3320851 (hereafter ‘document 2’);
- ‘EMU deepening’, World Economic Forum Annual Meeting 2019, reference Ares(2019)3317586 (hereafter ‘document 3’);
- ‘Bilateral with Tony Blair’, World Economic Forum Annual Meeting 2019, 23-24 January 2019, reference Ares(2019)3321274 (hereafter ‘document 4’);

- ‘EU-CH relations’, World Economic Forum Annual Meeting 2019, reference Ares(2019)3321218 (hereafter ‘document 5’);
- ‘QMV’, World Economic Forum Annual Meeting 2019, reference Ares(2019)3321179 (hereafter ‘document 6’);
- ‘President of the Swiss Confederation Mr Ueli Maurer’, World Economic Forum Annual Meeting 2019, 23 January 2019, reference Ares(2019)3321127 (hereafter ‘document 7’);
- ‘Digital taxation’, World Economic Forum Annual Meeting 2019, reference Ares(2019)3320902 (hereafter ‘document 8’);
- ‘Bilan TAXUD files’, World Economic Forum Annual Meeting 2019, reference Ares(2019)3320819 (hereafter ‘document 9’);
- ‘Meeting with New Zealand Finance Minister Grant Robertson’, World Economic Forum Annual Meeting 2019, 24 January 2019, reference Ares(2019)3320790 (hereafter ‘document 10’);
- ‘Meeting with Sir Suma Chakrabarti’, World Economic Forum Annual Meeting 2019, 23 January 2019, reference Ares(2019)3317930 (hereafter ‘document 11’);
- ‘US economic outlook’, World Economic Forum Annual Meeting 2019, reference Ares(2019)3317884 (hereafter ‘document 12’);
- ‘Global economic outlook’, World Economic Forum Annual Meeting 2019, reference Ares(2019)3317728 (hereafter ‘document 13’);
- ‘EU economic outlook’, World Economic Forum Annual Meeting 2019, reference Ares(2019)3317705 (hereafter ‘document 14’);
- ‘Trade and protectionism’, World Economic Forum Annual Meeting 2019, reference Ares(2019)3317665 (hereafter ‘document 15’).

In addition, the European Commission has identified e-mail exchanges registered under the following references:

- E-mail exchanges between European Trade Union Confederation and Cabinet Moscovici, reference Ares(2019)3324587 (hereafter ‘document 16’);
- e-mail exchanges within Cabinet Moscovici, reference Ares(2019)3324617 (hereafter ‘document 17’);

- e-mail exchanges between S&P Global and Cabinet Moscovici, reference Ares(2019)3324656 (hereafter ‘document 18’);
- e-mail exchanges between Bridgewater Associates and Cabinet Moscovici, reference Ares(2019)3324703 (hereafter ‘document 19’);
- e-mail exchanges between the Swiss Federal Department of Home Affairs and Cabinet Moscovici, reference Ares(2019)3324711 (hereafter ‘document 20’);
- e-mail exchanges between Booking.com International B.V and Cabinet Moscovici, reference Ares(2019)3324725 (hereafter ‘document 21’);
- e-mail exchanges between the Swiss Federal Department of Finance (‘FDF’) and Cabinet Moscovici, reference Ares(2019)3324744 (hereafter ‘document 22’);
- e-mail exchanges between New Zealand Permanent Mission to the World Trade Organisation and Cabinet Moscovici, reference Ares(2019)3324756 (hereafter ‘document 23’);
- e-mail exchanges between Bank of America Merrill Lynch and Cabinet Moscovici, reference Ares(2019)3324769 (hereafter ‘document 24’);
- e-mail exchanges between the Tony Blair Institute for Global Change and Cabinet Moscovici, reference Ares(2019)3324787 (hereafter ‘document 25’);
- e-mail exchanges between J.P Morgan and Cabinet Moscovici, reference Ares(2019)3324813 (hereafter ‘document 26’);
- e-mail exchanges between Quebec General Delegation in Brussels and Cabinet Moscovici, reference Ares(2019)3324830 (hereafter ‘document 27’);
- e-mail exchanges between La Stampa and Cabinet Moscovici, reference Ares(2019)3324852 (‘document 28’);
- e-mail exchanges between the European Bank for Reconstruction and Development and Cabinet Moscovici, reference Ares(2019)3324867 (hereafter ‘document 29’);
- e-mail exchanges between European Trade Union Confederation and Cabinet Moscovici, reference Ares(2019)3324877 (hereafter ‘document 30’);

- e-mail exchanges between European Trade Union Confederation and Cabinet Moscovici, reference Ares(2019)3324887 (hereafter ‘document 31’) and
- e-mail exchanges between Soros Fund Management LLC and Cabinet Moscovici, reference Ares(2019)3324684 (hereafter ‘document 32’).

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I can inform you that:

- full access is granted to documents 2-4, 6, 8-10 and 12-15;
- partial access is granted to documents 5, 7 and 11 based on Article 4(1)(a), third indent (protection of international relations) and Article 4(3), second subparagraph (protection of the decision-making process) of Regulation (EC) No 1049/2001;
- partial access is granted to documents 16-32 with only personal data redacted on the basis of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001;
- further partial access is granted to document 1. As regards the undisclosed parts of this document, I regret to inform you that I have to confirm the initial decision of the Directorate-General for Economic and Financial Affairs to refuse access, based on the exceptions of Article 4(1)(a), third indent (protection of international relations), Article 4(1)(b) (protection of privacy and the integrity of the individual and Article 4(3), second subparagraph (protection of the decision-making process) of Regulation (EC) No 1049/2001.

As regards the documents (partially) disclosed, you may reuse them free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document. The European Commission does not assume liability stemming from the reuse.

The detailed reasons for the partial access are set out below.

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

Article 4(1)(a), third indent of Regulation (EC) No 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 [...]’.

The Court of Justice has confirmed that it ‘is clear from the wording of Article 4(1)(a) of [Regulation (EC) No 1049/2001] that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests.’<sup>3</sup>

The Court of Justice stressed in the *In ‘t Veld* ruling that the institutions ‘must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the exceptions provided for in Article 4(1)(a) of Regulation 1049/2001] could undermine the public interest’<sup>4</sup>.

Consequently, ‘the Court’s review of the legality of the institutions’ decisions refusing access to documents on the basis of the mandatory exception [...] relating to the 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>5</sup>

Document 1 was drawn up by a Member of the Cabinet of Commissioner Moscovici in the context of the 2019 World Economic Forum Annual Meeting. The document is an informal debrief of the bilateral meetings held by the Commissioner with representatives of third countries and different industry sectors. It includes the main points which were subject of the discussions and reflects the author’s interpretation of the discussions. Document 7 is a ‘briefing note’ concerning a meeting between the President of the Swiss Confederation and Commissioner Moscovici.

The first redactions of document 1 and the withheld parts of document 7 concern the decision-making process leading to the revision of the Union list of non-cooperative jurisdictions for tax purposes. The purpose of this list, which is part of the European Union’s external strategy for taxation as defined by the Council of the European Union, is to contribute to ongoing efforts to prevent tax avoidance and promote tax good governance worldwide. Documents 1 and 7 relate to bilateral discussions on the adoption of the list and contain sensitive comments on an identified third country.

Public disclosure of the relevant withheld parts of documents 1 and 7 would reveal to the public strategic considerations regarding the blacklisting of a particular country, in the larger context of the elaboration of the list of countries which should be identified as high risk third states. The disclosure of these elements would put in the public domain strategic and tactical considerations taken into account in the process of identification of third countries.

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<sup>3</sup> Judgement of the Court of Justice of 1 February 2007, C-266/05 P, *Sison v Council*, EU:C:2007:75, paragraph 46.

<sup>4</sup> Judgment of the Court of Justice of 3 July 2014, *Council v In ‘t Veld*, C-350/12, EU:C:2014:2039, paragraph 63.

<sup>5</sup> Judgment of the General Court of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, EU:T:2007:114, paragraph 40.

This would undermine the public interest as regards the protection of the Union's international relations in a reasonably foreseeable and not purely hypothetical manner, as it would reduce the Union's negotiating stance and its negotiating power within this procedure. Moreover, it would allow other countries to gain insight into the European Union's tactics when assessing the regimes of the countries examined.

Document 5 contains sensitive comments regarding the negotiations on the Institutional Framework Agreement between the European Union and the Swiss Confederation.

Public release of the redacted parts of this document would seriously compromise the bilateral discussions on the framework agreement, which has not yet been adopted. Indeed, there is a risk that the disclosure of this information, which was not intended to be released to the public, would undermine the climate of mutual trust between the European Union and the Swiss Confederation, which is essential to ensure the smooth conduct of the discussions. I consider this risk as reasonably foreseeable and non-purely hypothetical, given the sensitivity of the negotiations and the fact that the matter is still subject to bilateral discussions with the authorities of the Swiss Confederation.

Document 11 is a 'briefing' note prepared by the Cabinet of Commissioner Moscovici in view of the meeting which took place on 23 January 2019 between the latter and the President of the European Bank for Reconstruction and Development. The European Bank for Reconstruction and Development is a multilateral development bank which uses investment as a tool to help build market economies and democracies. It is owned by 69 countries ('member countries') and two European Union institutions. Despite its public sector shareholders, it invests mainly in private enterprises, together with commercial partners. Given its international character, relations with the European Bank for Reconstruction and Development are qualified as international relations in the meaning of Article 4(1)(a), third indent of Regulation (EC) No 1049/2001.

Therefore, the withheld parts of document 11 have been assessed in light of the above-mentioned case-law.

Parts of document 11 concern internal discussions held at the European Bank for Reconstruction and Development on recent and future policy updates. In particular, they reflect the position of the Board members, including non-European Union countries, regarding the policy on domiciliation of the Bank's clients and the Bank's geographical expansion. The document contains details about the Bank's internal procedures and reflects the position of the European Commission in the context of the discussions.

Public access to the views of relevant actors on the above-referred policy developments, which are not publicly available, would negatively affect the European Union's relations with the European Bank for Reconstruction and Development, as it would reveal confidential information regarding the Bank's deliberative discussions. Indeed, as regards the revision of the domiciliation policy, the relevant minutes of the Board's meeting provide<sup>6</sup>, specifically, that the detailed information on the approval of the new policy is covered under Section E.1.2 ('Information considered confidential') of the Bank's Public Information Policy.<sup>7</sup>

Hence, by disclosing the details of the Bank for Reconstruction and Development's internal discussions, the European Commission would infringe the confidentiality requirements set out in the Bank's established policy on access to information and thereby undermine its relations with this institution.

Moreover, given that the procedure on the revision of the geographical scope of the Bank's activities is still ongoing, there is a real and non-hypothetical risk that public disclosure of the position adopted by individual countries in the context of these discussions would put under strain the relations between the European Union and other shareholders of the Bank.

Please note that the parts of the document containing internal European Commission's views on the outcome of the discussions and information on the Bank's internal proceedings are also protected under Article 4(1)(a), third indent of Regulation (EC) No 1049/2001, as their disclosure would reveal details about the negotiating strategy and assessment of the policy development process. It would therefore undermine the European Commission's negotiating stance in the context of the above-referred international discussions.

Nevertheless, should you be interested in further information regarding the position of the European Commission in these matters, I would like to refer to the public statements of the Temporary Alternate Governor for the European Union on the Bank's Annual Meetings of 2018 and 2019 and the Communication from the European Commission of 21 March 2018<sup>8</sup>, which are available respectively in the following links:

<https://www.ebrd.com/cs/Satellite?c=Content&cid=1395273914649&d=&pagename=EBRD%2FContent%2FDownloadDocument;>

<https://www.ebrd.com/cs/Satellite?c=Content&cid=1395282316304&d=&pagename=EBRD%2FContent%2FDownloadDocument;>

[https://ec.europa.eu/info/sites/info/files/economy-finance/c\\_2018\\_1756\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/c_2018_1756_en_0.pdf).

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<sup>6</sup> The minutes are available in the following link:  
<https://www.ebrd.com/cs/Satellite?c=Content&cid=1395280644268&d=&pagename=EBRD%2FContent%2FDownloadDocument>.

<sup>7</sup> European Bank for Reconstruction and Development, Public Information Policy as approved by the Board of Directors at its Meeting on 7 May 2014.

<sup>8</sup> Communication from the European Commission on new requirements against tax avoidance in EU legislation governing in particular financing and investment operations, 21.3.2018, C(2018) 1756 final.

Consequently, there is a reasonably foreseeable and non-purely hypothetical risk that public access to the relevant undisclosed parts of document 11 would undermine the public interest as regards the protection of international relations with the European Bank for Reconstruction and Development and its member countries.

In light of the above, I take the view that reliance on Article 4(1)(a), third indent of Regulation (EC) No 1049/2001 is justified and access to the relevant redacted parts of documents 1, 5, 7 and 11 must therefore be refused on that basis.

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

Article 4(1)(b) of Regulation (EC) No 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'.

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>9</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, 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<sup>10</sup> (hereafter 'Regulation (EC) No 45/2001') becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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<sup>11</sup> (hereafter 'Regulation (EU) 2018/1725').

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 'requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation'.<sup>12</sup>

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'.<sup>12</sup>

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<sup>9</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as '*European Commission v The Bavarian Lager* judgment') C-28/08 P, EU:C:2010:378, paragraph 59.

<sup>10</sup> Official Journal L 8 of 12.1.2001, p. 1.

<sup>11</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>12</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.<sup>13</sup>

Documents 1 and 16-32 contain personal data such as the names, surnames and contact details (including e-mail and telephone numbers) of persons who do not form part of the senior management of the European Commission. The documents also contain personal data from third parties, such as names, surnames and contact details. The names<sup>14</sup> of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 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 (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.<sup>15</sup> This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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.

In your confirmatory 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 subjects’ legitimate interests might be prejudiced.

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<sup>13</sup> Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

<sup>14</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

<sup>15</sup> Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the 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 (EC) No 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 the disclosure of the personal data concerned.

### **2.3. Protection of the decision-making process**

Article 4(3) of Regulation (EC) No 1049/2001 provides that ‘access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure’.

As explained in Section 2.1 above, document 1 was elaborated by a Member of the Cabinet of Commissioner Moscovici following the meetings held by the Commissioner in Davos. The document, which was drawn up for internal use only, contains an informal debrief sent directly after the meetings. It reflects the views of the Member in question on various topics relevant to the meetings. In particular, the redacted parts of the document concern sensitive matters such as, for instance, the revision of the Union list of non-cooperative jurisdictions for tax purposes, and recent developments in the process for the withdrawal of the United Kingdom from the European Union. It should be underlined that the views and opinions put forward in the document, which were not meant to be disclosed to the public, reflect solely the author’s interpretation of the interventions made during the meetings and do not set any official position of the actors involved in the discussions. Documents 5 and 7 were drawn up by relevant European Commission services for internal use before the relevant meeting took place.

Consequently, documents 1, 5 and 7 have to be considered as containing opinions for internal use, as part of deliberations and preliminary consultations within the institution in the sense of Article 4(3), second subparagraph of Regulation (EC) No 1049/2001.

Public access to the redacted parts of the document is likely to bring a serious harm to the institution's decision-making process as it would deter members of the European Commission from putting forward their views on the above-referred and other related matters in an open and independent way and without being unduly influenced by the prospect of disclosure.

Indeed, as the General Court has held, 'the possibility of expressing views independently within an institution helps to encourage internal discussions with a view to improving the functioning of that institution and contributing to the smooth running of the decision-making process'.<sup>16</sup>

Moreover, as regards document 1, it should be outlined that the document reflects the views of a Member of the Cabinet on issues which are still under discussions. Indeed, public disclosure of the briefing note could lead to confusion with the final position adopted by the institution. Please note that, given the limited volume of the relevant redacted parts, it is not possible to give more detailed reasons justifying the need for confidentiality without disclosing the opinion of the member concerned and, thereby, depriving the exception of its very purpose.<sup>17</sup>

Therefore, public release of the relevant withheld parts of documents 1, 5 and 7 is likely to bring a serious harm to the European Commission's decision-making process by severely affecting the ability of its members to hold frank internal discussions on issues related to the interaction with representatives of third countries, international organisations and private stakeholders. Given the likelihood of the internal debate being severely impoverished by the disclosure of the internal opinions on the above-referred sensitive topics, I consider that this risk is reasonably foreseeable and non-hypothetical.

In light of the above, the relevant undisclosed parts of documents 1, 5 and 7 should be protected in accordance with Article 4(3), second subparagraph of Regulation (EC) No 1049/2001.

I consider that the above-referred considerations also apply to the relevant undisclosed parts of document 11. Indeed, there is a real and non-hypothetical risk of self-censorship by the European Commission services which monitor the relations between the European Union and the European Bank for Reconstruction and Development and assist the relevant Cabinet in promoting the Union standards in projects financed by the Bank.

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<sup>16</sup> Judgment of the General Court of 15 September 2016, *Phillip Morris v Commission*, T-18/15, EU:T:2016:487, paragraph 87.

<sup>17</sup> Please see in this respect: Judgment of the General Court of 24 May 2011, *NLG v Commission*, T-109/05 and T-444/05, EU:T:2011:235, paragraph 82. See also Judgment of the General Court of 8 February 2018, T-74/16, *Pagkyprios organismos ageladotrofon v Commission*, EU:T:2018:75, paragraph 71.

Moreover, as the document contains internal considerations regarding discussions with the Romanian authorities and the institution's possible course of action, public release of this information would seriously undermine the decision-making process of the European Commission, as it would negatively affect the ability of its staff members to put forward their views on strategic questions relating to negotiations with Member States without undue external pressure.

Hence, public access to the briefing note would bring a serious harm to the decision-making of the European Commission, as the staff of the services concerned would become more wary to provide a frank and open advice to the Commissioner and share their views openly if they knew that their opinions would be released to the public.

Consequently, I must conclude that the relevant undisclosed parts of the briefing note contained in document 11 are also protected under Article 4(3), second subparagraph of Regulation (EC) No 1049/2001.

### **3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your confirmatory application, you argue that 'there is a strong public interest in knowing what policymakers and politicians discuss at exclusive meetings like the one in Davos'.

Whilst I agree that your arguments point to a certain public interest in the case at hand, this public interest has, in my view, been fulfilled by the (wide) partial access to the documents which is herewith granted.

As regards the limited parts of document 1 which are redacted on the grounds of Article 4(3), second subparagraph (protection of the decision-making process) of Regulation (EC) No 1049/2001, I consider that the arguments you put forward in support of your request do not establish sufficiently how, in the present case, the public interest in transparency of the relations with politicians is particularly compelling so as to prevail over the reasons justifying the refusal of the information reflected therein, as set out in Section 2.3 above.

As regards the remaining parts of documents 1, 5, 7 and 11 which have been redacted on the basis of the above-referred exception, I would like to underline that these parts are also covered by the exception provided for under Article 4(1)(a), third indent of Regulation (EC) No 1049/2001, for which no balancing test between an overriding public interest in disclosure and the public interest protected by the exception (international relations) is foreseen in the same Regulation.

Hence, I consider that, in this case, it has not been established that the public interest in openness in the relations with policymakers and politicians would outweigh the public interest in safeguarding the decision-making process that, as explained in Section 2.3, warrant protection under Article 4(3), second subparagraphs of Regulation (EC) No 1049/2001. The fact that the documents concerned do not relate to a legislative act, for which the Court of Justice has acknowledged the existence of a need for wider openness,<sup>18</sup> provides further support to this conclusion.

Please also be informed that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

#### **4. PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting (further) partial access to the documents requested.

As stated above, further partial access is herewith granted to document 1. In addition, partial access is granted to documents 5, 7 and 11 and documents 16 to 32.

With regard to the informal debrief of the meetings (document 1), I consider that further access to the undisclosed parts of this document would undermine the protection of international relations and would seriously undermine the protection of the decision-making process for the reasons described in Sections 2.1 and 2.3 above. As regards documents 5, 7 and 11, I consider that the withheld parts of the documents are fully covered by the exceptions protecting the Union's international relations and the European Commission's decision-making process. The undisclosed parts of documents 16-32 contain personal data which cannot be released for the reasons set out in Section 2.2 above.

Hence, no meaningful further partial access to these documents is possible without undermining the interests described above.

#### **5. MEANS OF REDRESS**

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

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<sup>18</sup> Judgment of 28 June 2010, *Commission v Technische Glaswerke Ilmenau GmbH*, C-139/07 P, EU:C:2010:376, paragraphs 53-55 and 60.

Yours sincerely,

*For the Commission*  
*Martin SELMAYR*  
*Secretary-General*

**CERTIFIED COPY**  
For the Secretary-General,

**Jordi AYET PUIGARNAU**  
Director of the Registry  
**EUROPEAN COMMISSION**

Enclosures: (32)