



**EUROPEAN COMMISSION**

Directorate-General for Trade  
Directorate A - Resources, Information and Policy Coordination  
**Transparency and Evaluation**  
**The Head of Unit**

Brussels,  
trade(2019)2585024

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

Ms Josefina Marti  
Juan Bravo 628  
28006 Madrid

***Advance copy by email:***

[ask+request-6473-b2511295@asktheeu.org](mailto:ask+request-6473-b2511295@asktheeu.org)

**Subject: Your application for access to documents – Ref GestDem No 2019/1163**

Dear Ms Marti,

I refer to your email of 27 February 2019 in which you make a request for access to documents under Regulation (EC) No 1049/2001<sup>1</sup> ("Regulation 1049/2001"), and which was registered on the 28 February under the reference GestDem No 2019/1163.

You request access to documents which contain the following information:

- 1) *All the agendas/ minutes/ notes/ documents/ presentations/ videos (and any other information) produced and exchanged in the meeting between Jon Nyman, Cabinet member of Cecilia Malmström and, and CIDSE (International Alliance of Catholic development agencies), on the 20/06/2017.*
- 2) *A list of all the people present at the meeting and their roles.*
- 3) *All the correspondence (including phone calls, emails, letters) between any member of the Cabinet and CISDE from 2015.*

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<sup>1</sup> 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.

In relation to **point 1**, we have identified the following documents that fall under the scope of your request:

- An email sent on 1 June 2017 from CIDSE to Commissioner Malmström Cabinet member Isabelle Magne requesting a meeting to discuss the EU-Myanmar Investment Protection Agreement currently under negotiation;
- An exchange of emails on 9 June 2017 between the Commissioner Malmström Cabinet and CIDSE on setting up mutually convenient time;
- A report of the meeting held on 20 June 2017 between Cabinet member Jon Nyman and CIDSE-led delegation on the EU-Myanmar Investment Protection Agreement.

In relation to **point 2**, I can confirm that the Commission does not hold any specific list of the people present at the meeting. As specified in the Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

**For point 3**, we have identified the following documents which we broadly interpreted as being correspondence from CIDSE despite the fact that a few of them are signed by numerous organisations:

1. A letter dated on 12 July 2017 from CIDSE to Commissioner Malmström (Ares(2018)3741681);
2. An email from CIDSE to Commissioner Malmström dated 15 February 2016 on policy briefing on conflict minerals (Ares(2016)808574) – link to the policy briefing published online:  
<https://www.cidse.org/publications/business-and-human-rights/final-steps-to-put-an-end-to-complicity-in-funding-conflicts.html>;
3. An open letter on the visit of Maria Dolores Aguero, Minister of Foreign Affairs of Honduras dated 7 June 2017 to High Representative of the Union for Foreign Affairs and Security Policy Ms Federica Mogherini, Trade Commissioner Ms Cecilia Malmström and International Cooperation and Development Commissioner Mr Neven Mimica and MEP Sofia Sakorafa signed by ACT Alliance EU, CIDSE, CIFCA, FIDH, Front Line Defenders, GRUPO SUR, Misereor, Protection International, OMCT (Ares(2017)2879998);
4. An email from CIDSE to Commissioner Malmström dated 1 April 2016 about the forthcoming trilogue meeting on Conflict Minerals taking place on Tuesday 5<sup>th</sup> April 2016 (Ares(2016)1567955);
5. An email from CIDSE to Commissioner Malmström dated 16 March 2016 about the petition signed in favour of ambitious regulation on “conflict minerals”(Ares(2016)1352101);
6. (a) An email from CIDSE to Commissioner Malmström dated 4 April 2016 on trilogue meeting on the EU conflict minerals regulation (Ares(2016)1612474) –

link to the key messages from conflict minerals panel debate published online: <https://www.cidse.org/publications/business-and-human-rights/panel-debate-on-eu-conflict-minerals-regulation-2.html> ;

(b) Petition letter referred to in email from CIDSE to Commissioner Malmström dated 4 April 2016;

7. An email from CIDSE to Commissioner Malmström presenting an opinion article “Gender-based violence and mining-fuelled conflict” (Ares(2016)2024074) – link to the article published online: <https://www.cidse.org/articles/business-and-human-rights/conflict-minerals/gender-based-violence-and-mining-fuelled-conflict.html>;
8. An email from sef: to Commissioner Malmström dated 21 December 2017 on Policy Lunch on UN Treaty on Business & Human Rights attaching a short conference report (Ares(2017)6326632) - link to the short conference report published online: <https://www.cidse.org/publications/business-and-human-rights/business-and-human-rights-frameworks/is-the-window-of-opportunity-still-open.html>;
9. An email from sef: to Commissioner Malmström dated 9 November 2017 attaching current programme of sef: Policy lunch scheduled on 20 November 2017 (Ares(2017)5458709) - link to final programme published online: [https://www.sef-bonn.org/fileadmin/SEF-Dateiliste/03\\_Veranstaltungen/Policy\\_Lunch/2017-11/2017\\_pl\\_program.pdf](https://www.sef-bonn.org/fileadmin/SEF-Dateiliste/03_Veranstaltungen/Policy_Lunch/2017-11/2017_pl_program.pdf);
10. An email from sef: to Commissioner Malmström dated 27 October 2017 attaching draft programme of sef: Policy lunch scheduled on 20 November 2017 (Ares(2017)5262315) - link to the final programme published online: [https://www.sef-bonn.org/fileadmin/SEF-Dateiliste/03\\_Veranstaltungen/Policy\\_Lunch/2017-11/2017\\_pl\\_program.pdf](https://www.sef-bonn.org/fileadmin/SEF-Dateiliste/03_Veranstaltungen/Policy_Lunch/2017-11/2017_pl_program.pdf);
11. An email from Friends of the Earth Europe to High Representative of the Union for Foreign Affairs and Security Policy Ms Federica Mogherini, First Vice President of the European Commission Mr Frans Timmermans and Commissioner Justice, Consumers and Gender Equality Ms Vera Jourava (copied to Commissioner Malmström’s Cabinet) (Ares(2017)5242379);
12. An email from sef: to Commissioner Malmström dated 7 October 2016 inviting to the sef: Policy lunch scheduled on 7 November 2016 (Ares(2016)5811697) – link to final programme published online: [https://www.sef-bonn.org/fileadmin/SEF-Dateiliste/03\\_Veranstaltungen/Policy\\_Lunch/2016-11/2016-11\\_pl\\_programme.pdf](https://www.sef-bonn.org/fileadmin/SEF-Dateiliste/03_Veranstaltungen/Policy_Lunch/2016-11/2016-11_pl_programme.pdf);
13. An email from Brot für die Welt to Commissioner Malmström dated 9 March 2016 attaching an invitation to a panel debate on Monday 14 March 2016 (Ares(2016)1201374) – link to the final invitation published online: [http://www.justicepaix.be/IMG/pdf/conflict\\_minerals\\_panel\\_debate\\_14\\_march\\_6\\_pm\\_comece.pdf](http://www.justicepaix.be/IMG/pdf/conflict_minerals_panel_debate_14_march_6_pm_comece.pdf);

14. An email from sef: to Commissioner Malmström dated 10 April 2015 attaching a programme of sef: Policy lunch scheduled on 6 May 2015 (Ares(2015)1546902) - link to final programme published online : [https://www.sef-bonn.org/fileadmin/SEF-Dateiliste/03\\_Veranstaltungen/Policy\\_Lunch/2015-05/2015-05\\_pl\\_programme\\_en.pdf](https://www.sef-bonn.org/fileadmin/SEF-Dateiliste/03_Veranstaltungen/Policy_Lunch/2015-05/2015-05_pl_programme_en.pdf);
15. (a+b) An email from FIDH/International Federation for Human Rights to Commissioner Malmström and Vice-President of the European Commission Frans Timmermans dated 19 March 2015 enclosing an open letter from FIDH and MISEREOR to Commissioner Malmström and Vice-President Frans Timmermans enclosing a further open letter on the request for public consultation on the revision of the “Handbook for Trade Sustainability Impact Assessment” adopted in 2006 (Ares(2015)1293234);

I am glad to inform you that access can be granted to the content of these documents. However, some personal data have been withheld 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 accountability<sup>2</sup>, the names of the Members of Cabinet are disclosed. Copies of the accessible documents are enclosed.

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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 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/EC3 (‘Regulation 2018/1725’).

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.<sup>4</sup> Please note in this

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<sup>2</sup> See Commission decisions C(2014) 9051 and C(2014) 9048 of 25 November 2014.

<sup>3</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>4</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.<sup>5</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>6</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable<sup>7</sup>

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.

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In case you would disagree with the assessment provided above, 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.

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<sup>5</sup> Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, ECLI:EU:T:2018:560.

<sup>6</sup> 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.

<sup>7</sup> 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.

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, Document Management & Access to Documents unit SG-C-1  
BERL 7/076  
1049 Bruxelles

Or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

*[e-signed]*

Damien Levie