



EUROPEAN COMMISSION

Brussels, 24.2.2020
C(2020) 1186 final

Mr Peter Teffer
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Bemuurde Weerd WZ 3
3513 BH Utrecht
The Netherlands

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2019/6118**

Dear Mr Teffer,

I refer to your letter of 28 November 2019, registered on the same day, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter ‘Regulation (EC) No 1049/2001’).

1. SCOPE OF YOUR REQUEST

In your initial application of 28 October 2019, addressed to the Secretariat-General of the European Commission, 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 sent before and after, and presentations – related to the 24/06/2019 meeting between Mr José Manuel Barroso of the Goldman Sachs Group, and President Jean-Claude Juncker’.

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L 145, 31.5.2001, p. 43.

The European Commission has identified the following documents as falling under the scope of your request:

- Program for the ceremony of the presentation of the book “European Commission 1986-2000 – History and Memory of an Institution”, dated 24 June 2019, reference Ares(2019)7344371 (hereafter ‘document 1’);
- Program for the visit of the former Presidents of the European Commission, dated 21 June 2019, reference Ares(2019)7344371 (hereafter ‘document 2’).

In its initial reply of 28 November 2019, the Secretariat-General granted wide partial access to these documents. Redactions have been made solely on the basis of the exception of Article 4(1)(b) (protection of the privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this decision as regards the identified documents. You indicate that, I quote, ‘[...] in the register of Meetings with organisations and self-employed individuals (<https://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=829436d0-1850-424f-aebe-6dd76c793be2>) the Juncker cabinet had registered that a meeting took place with Mr José Manuel Barroso *ahead* of the book presentation. It identified Mr Barroso as representing the Goldman Sachs Group, Inc. (GS). It has not registered similar meetings taking place ahead of the book presentation between Mr Juncker and any of the other former presidents present that day. Effectively, the Commission's response is saying that no minutes or other types of notes have been taken about the discussion between Mr Juncker and Mr Barroso. [...] I would like to urge the Commission to check its files again for any record of the bilateral discussion between Mr Juncker and Mr Barroso.’

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 at the initial stage.

Within the framework of this review, the Secretariat-General conducted a new search in the archives of the European Commission in order to verify whether the identification of documents falling under the scope of your request had been fully correct at initial stage.

The repeated search resulted in having found no further documents that are relevant to your request, beyond document 1 and document 2. Accordingly, I would like to confirm that no additional documents exist or are in the possession of the European Commission in relation to the meeting that took place between Mr Barroso and Mr Juncker on 24 June 2019.

The short “courtesy” meeting between former President Barroso and former President Juncker took place in the context of an official ceremony concerning the presentation of the book. Thus, given the very ceremonial nature of the meeting, no document for the

preparation of the meeting nor additional document concerning this meeting has been created or retained by the Commission. I would also like to clarify that the publication of an entry in the public Register of Meetings with regard to the meeting between former President Juncker and former President Barroso is only due to the fact that at the time in which the ceremony took place, there existed an employment relationship between the former President Barroso and an organisation (Goldman Sachs Group, Inc.) which is registered as an organization in the Transparency Register³.

If the institution asserts that a document does not exist, it is presumed not to exist according to the case law of the Court of Justice: '[i]t follows that the Commission's assertion that there is no other document corresponding to the applicant's request for access benefits from a presumption of legality [...]'⁴.

Indeed, this presumption can be overturned. However, in order to put this presumption in question, the applicant shall present suitable evidence⁵.

In your confirmatory application, I could not identify any relevant and consistent evidence that would prove the existence of documents – beyond document 1 and document 2 – in relation to the meeting that took place between Mr Barroso and Mr Juncker on 24 June 2019. Therefore, I declare that the presumption concerning the non-existence of further documents falling under the scope of your request remains valid.

Consequently, I confirm the decision of the Secretariat-General made at initial level, that is, the granting of wide partial access to document 1 and document 2 subject to redactions on the basis of the exception of Article 4(1)(b) (protection of the privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exceptions 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, the widest possible access has already been granted to document 1 and document 2 by taking into account that in your confirmatory application, you did not object the redactions of personal data on the basis of Article 4(1)(b) of Regulation (EC) No 1049/2001.

³ <https://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>

⁴ Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraph 36.

⁵ Judgment of the General Court of 25 September 2018, *Maria Psara and Others v European Parliament*, joined cases T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 33.

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.

Yours sincerely,

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

For the Commission
Ilze JUHANSONE
Secretary-General