



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND  
TECHNOLOGY

The Director-General

Brussels, 16<sup>th</sup> December 2019  
CNECT/R4

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## **REGISTERED MAIL WITH ACKNOWLEDGEMENT OF RECEIPT**

**Subject: Your application for access to documents – GestDem 2019/6277**

Dear Mr Stolton,

We refer to your application for access to documents submitted under Article 2(1) of Regulation 1049/2001 on public access to documents (hereinafter, ‘Regulation 1049/2001’) received on 04/11/2019 and registered on the same day under the above-mentioned reference number. We also refer to our holding reply dated 26/11/2019 (our reference, [Ares\(2019\)7254270](#)) whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

### **1. SCOPE OF YOUR APPLICATION**

In your application, you requested access to the following documents:

*“- A list of all meetings held between DG CNECT and US Deputy Assistant Secretary of State for Cyber and International Communications and Information Policy, Robert Strayer, over the past year. The list should include the dates of the meetings, the individuals present, as well as the issues discussed.*

*- Detailed minutes of the above meetings.*

*- All correspondence (i.e. any emails, correspondence, telephone call notes, and/or text messages including WhatsApp exchanges) between DG CNECT (including the*

Commissioner and the Cabinet) and Mr. Strayer or a representative of his, over the past year”.

## **2. DOCUMENTS FALLING WITHIN THE SCOPE OF YOUR REQUESTS**

We have identified three documents as falling within the scope of your application:

- **Document 1:** Email correspondence (ranging from 01/02/2019-26/02/2019) with US authorities in preparation for a meeting held on 25 February 2019 between the Director General for DG CONNECT and US authorities;
- **Document 2:** Back to office report prepared for the same meeting;
- **Document 3:** Back to office report prepared for a meeting held on 27/09/2019 between the Director General for DG CONNECT and Mr. Robert Strayer.

No documents were found in relation to the part of your request relating to a list of all meetings between DG CONNECT and Mr. Robert Strayer over the past year.

## **3. ASSESSMENT UNDER REGULATION 1049/2001**

Having examined the documents requested under the provisions of Regulation 1049/2001 regarding public access to documents, we regret to inform you that access cannot be granted to the documents identified on the basis of the exception laid down in Article 4(1)(a) third indent of Regulation 1049/2001.

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.

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 [...] calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation"*.<sup>1</sup> 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"*.<sup>2</sup>

**Documents 1, 2 and 3** contain comments and positions made by US authorities and DG CONNECT. There is a concrete risk that the public disclosure of the documents would affect the mutual trust between the EU and the US Government and thus undermine their relations. As the Court recognised in Case T-301/10 *in't Veld v Commission*, *"[...] establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise"*.<sup>3</sup> Consequently, access to Documents 1, 2 and 3 is refused.

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<sup>1</sup> Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

<sup>2</sup> Judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

<sup>3</sup> Judgment in *Sophie in 't Veld v Commission*, T-301/10, EU:T:2013:135, paragraph 126.

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

We have considered whether partial access could be granted to the document requests. However, partial access is not possible considering that the documents concerned are covered in their entirety by the exception under Article 4(1)(a), third indent of Regulation 1049/2001.

#### **5. CONFIRMATORY APPLICATION**

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  
Transparency, Document Management & Access to Documents (SG.C.1)  
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,

(e-Signed)  
Roberto Viola