



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES

Acting Director General

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*By registered letter with acknowledgment
of receipt*

Mr Olivier Hoedeman
Corporate Europe Observatory (CEO)
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*Advance copy by Email: [ask+request-7509-
2ef07215@asktheeu.org](mailto:ask+request-7509-2ef07215@asktheeu.org)*

Subject: Your application for access to documents – Ref GestDem 2019/7292

Dear Sir,

We refer to your email of 13 December 2019, in which you make a request for access to documents, registered on 17 December 2019 under the above mentioned reference number.

You request access to all reports (and other notes) from meetings between the European Commission and representatives of the tobacco industry (producers, distributors, importers etc. as well as organisations and individuals that are funded by and/or work to further the interests of the tobacco industry), during 2019. Moreover, you request access to all correspondence (including emails) between the European Commission and representatives of the tobacco industry (producers, distributors, importers etc. as well as organisations and individuals that are funded by and/or work to further the interests of the tobacco industry), during 2019.

Please note that due to the wide scope of your request, covering also areas falling under the responsibility of other Directorates-General, parts of your request have been attributed to other Directorates-General¹. This reply relates only to the documents held by the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. You will receive the replies from the other respective Directorates-General in due course.

¹ DG SANTE: GESTDEM reference 2019/7290
DG AGRI: GESTDEM reference 2019/7294
SG: GESTDEM reference 2019/7295
DG TAXUD: GESTDEM reference 2019/7296
DG TRADE: GESTDEM reference 2019/7297
DG COMP: GESTDEM reference 2019/7298
DG ECFIN: GESTDEM reference 2019/7299

You will find attached a table listing the documents identified as falling within the scope of your request and summarising the outcome of the assessment carried out on the basis of Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents².

Following the assessment of these documents identified, please note that we have organised them into the following categories.

I. Publicly available documents

Please note that documents Nos 1, 2 and 4 that fall under the scope of your request are publicly available, under the section "*Contributions*" via the following links:

- <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2019&num=280>
- <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2019&num=479>

II. Documents to which access is denied

Since some of the documents concerned originate from third parties, originators of the documents have been consulted.

Following an examination of these documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third parties, I regret to inform you that your application cannot be granted as far as documents 5 to 7, 10 to 15, 20 to 22, 27 and 30 are concerned, as disclosure is prevented by exception to the right of access laid down in Article 4(2) of this Regulation.

The authors of documents Nos 5 to 7, 10 to 15, 20 to 22, 27 and 30 have objected to the disclosure of the documents that they sent to the Commission and have motivated their position as follows: The documents contains commercially sensitive business information of the companies that submitted them.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply, unless there is an overriding public interest in disclosure of the documents. Pursuant to Article 4(2) of Regulation (EC) 1049/2001, the exceptions to the right of access defined therein must be waived if there is an overriding public interest in disclosing the document requested. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. it must outweigh the protection of commercial interests under Article 4(2) of Regulation (EC) No 1049/2001.

In your request, you explain that “[t]here is a clear public interest in disclosure of these documents, with reference to the World Health Organisation's Framework Convention on Tobacco Control (Article 5.3) and its guidelines for implementation: - “in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry.” - “Parties should ensure that any interaction with the tobacco industry on matters related to tobacco control or public health is accountable and transparent,” and “establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.”

² OJ L145 of 31.5.2001, p. 43.

The fact that some of the relevant documents contain information that could be considered as 'commercial interests' under Regulation (EC) No 1049/2001 has been taken into account and the grounds for refusal have been interpreted in a restrictive way.

As a result, we have granted wide partial access to most of the documents falling into the scope of your request. For the documents to which access is refused fully or partially, we do not consider that the right of information overrides the interests protected by Article 4(2) of Regulation (EC) No 1049/2001. Therefore, we consider that, in the present case, the public interest in making the content of the documents public does not outweigh the harm disclosure would cause to the interests protected by the invoked exception.

III. Partial access: personal data redacted

With regard to documents Nos 3, 8, 9, 16 to 19, 23 to 26, 28, 29 and 31, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union 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 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').

The documents to which you request access contain personal data, in particular names, functions and e-mail addresses.

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.⁴

Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.⁵

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁶, 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.⁷

³ Official Journal L 205 of 21.11.2018, p. 39.

⁴ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

⁵ 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](#).

⁶ 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.

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.

In your request, you do not put forward any arguments to establish the necessity to have the personal 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 subject’s legitimate interests might be prejudiced.

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.

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 disclosure of the personal data concerned.

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit a confirmatory application requesting the Commission to review this position.

⁷ 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 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 Brussels, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Gwenole COZIGOU