



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR TRADE

The Director-General

 Ref. Ares(2020)2721590 - 26/05/2020

Brussels  
TRADE.E.3/ 2550980

Mr. Nikolaj Nielsen  
EUobserver  
Avenue d'Auderghem / Oudergemlaan  
150  
1040 Brussels

***By e-mail with request of  
acknowledgement of receipt***  
[ask+request-7602-dc7802e1@asktheeu.org](mailto:ask+request-7602-dc7802e1@asktheeu.org)

**Subject: Your application for access to documents – Ref GestDem No 2020/0438**

Dear Sir,

We refer to your application to dated 23/01/2020 in which you make a request for access to documents in accordance with Regulation (EC) 1049/2001, registered on the same day under the reference GestDem No 2020/0438.

Please accept our apologies for the delay in preparing the reply to your request, which is mainly due to a high number of access to documents requests being processed at the same time by DG Trade.

## **1. SCOPE OF YOUR REQUEST**

You requested to access the following documents:

*- All documents related to Jean Luc Demarty's meeting with G4S on 10 June 2016, the outcome of those talks, and the investments discussed concerning G4S in Israel.*

On the basis of the scope of your request we have identified the following 2 documents:

- Flash Report: meeting 10/06 J-L Demarty-G4S-Ares(2016)3200907
- Letter by G4S to Mr Demarty – Ares(2020)2566187

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

In accordance with settled case law, when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001.

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111  
Office: CHAR 07/067 - Tel. direct line +32 229-60143

Sabine.WEYAND@ec.europa.eu

Such assessment is carried out in a multi-step approach. First, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception. Second, it must examine whether disclosure of the parts of the document in question poses a “reasonably foreseeable and not purely hypothetical” risk of undermining the protection of the interest covered by the exception. Third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Articles 4(2) and 4(3) of Regulation 1049/2001, the institution is required “to ascertain whether there is any overriding public interest justifying disclosure”.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents, “the exceptions to that right [...] must be interpreted and applied strictly”.

Having examined the document in light of the applicable legal framework, I would like to inform you that no access can be granted to these documents as the document is entirely covered by the exceptions to the right of access set out in Article 4.1(a) third indent and Article 4(2) first indent of Regulation 1049/2001.

The reasons justifying the application of the exception are set out below in Sections 2.1 and 2.2, Section 3 contains an assessment of whether there exists an overriding public interest in the disclosure and section 4 considered whether partial access could be granted to the documents withheld.

## **2.1 Protection of international relations**

Article 4(1)(a), third indent, of Regulation 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”.

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, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation”. 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” .

The General Court found that “it is possible that the disclosure of European Union positions in international negotiations could damage the protection of the public interest as regards international relations” and “have a negative effect on the negotiating position of the European Union” as well as “reveal, indirectly, those of other parties to the negotiations” . Moreover, “the positions taken by the Union are, by definition, subject to change depending on the course of those negotiations and on concessions and compromises made in that context by the various stakeholders. The formulation of

*negotiating positions may involve a number of tactical considerations on the part of the negotiators, including the Union itself. In that context, it cannot be precluded that disclosure by the Union, to the public, of its own negotiating positions, when the negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating capacity of the Union” .*

The part of the document redacted on the basis of the Art 4.1(a) third indent presents some positions and strategy options of the trading partner which disclosure would undermine the protection of the public interest as regards international relations. Such disclosure would weaken the EU’s capacity to negotiate with Israel and consequently have an adverse impact on the on-going and future relations with the partner. It may also jeopardise the mutual trust between the EU and other trading partners as they may fear that in the future their positions would be exposed and they may as result refrain from engaging with the EU.

## **2.2. Protection of commercial interest**

Article 4(2) first indent of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] commercial interests of a natural or legal person, including intellectual property [...] unless there is an overriding public interest in disclosure”.

Most parts of the concerned documents reveal specific views, concerns and interests of G4S regarding global markets. They contain commercial priorities, strategies and concerns this stakeholder has. There is a reasonably foreseeable risk that the public disclosure of this information would harm the commercial interests of G4S, as it could be exploited by competitors to undermine their competitive position on the global markets. In view of the above it was decided to withhold these documents from public disclosure.

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

The exception laid down in Article 4(2) first indent of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. Such an interest must, first, be public and, secondly, outweigh the harm caused by disclosure. Accordingly, we have also considered whether the risks attached to the release of documents are outweighed by the public interest in accessing the requested documents. We have not been able to identify any such public interest capable of overriding the commercial interests of the companies concerned. The public interest in this specific case rather lies on the protection of the legitimate confidentiality interests of the stakeholders concerned to ensure that the Commission continues to receive useful contributions without undermining the commercial position of the entities involved.

## **4. PARTIAL ACCESS**

Pursuant to Article 4(6) of Regulation 1049/2001 “[i]f only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released”. Accordingly, we have also considered whether partial access could be

granted to documents 1 and 2 However, and after a careful review, we have concluded that this is not possible.

The content of those documents is entirely covered by the exceptions described above and it is thus impossible to disclose any parts of these documents without undermining the protection of the interests identified in this reply.

\*\*\*

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 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,



Sabine WEYAND