



EUROPEAN COMMISSION

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OUT OF SCOPE

Belgium

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2018/3690**

Dear [REDACTED],

I refer to your letter of 5 September 2018, registered on the same day, in which you submit 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 1049/2001’).

1. SCOPE OF YOUR REQUEST

In your initial application of 3 July 2018, addressed to the Directorate-General for Agriculture and Rural Development, you requested access to documents described as follows:

- a) ‘[I]n the minutes of the meeting held on 30 March 2011 (st point 2) reference is made to a discussion of cases where Mexico detected violations regarding Tequila on the European market. This was done on the basis of list (referred to in the minutes on 3 June 2013, at point 4);
- b) In the minutes of the meeting held on 3 June 2013, reference is made (st point 4) to documents presented by the Tequila Regulatory Council involving products

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

produced in the EU that are considered by Mexico to be a clear infringement of the geographical indication Tequila.’

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

- 1) ‘Tequila cases found by the Tequila Regulatory Council to be informed to the European Commission (Ares(2018)4023479)’;
- 2) Verification Reports in the European Market (Reportes de Verificación en el Mercado Europeo) (Ares(2018)4023509).’

As the requested documents originate from the United Mexican States, and in accordance with Article 4(4) of Regulation 1049/2001, the Directorate-General for Agriculture and Rural Development consulted the Mexican authorities as to the possible disclosure of the documents concerned.

The Mexican authorities opposed the disclosure of the documents on the basis of Article 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property) of Regulation 1049/2001.

Following the opposition of the Mexican authorities, the Directorate-General for Agriculture and Rural Development, taking into account the reply of the Mexican authorities, refused access to both documents based on the exceptions protecting commercial interests and international relations defined respectively in Article 4(2), first indent and Article 4(1)(a), third indent of Regulation 1049/2001.

Through your confirmatory application, you request a review of this position. You underpin your request with detailed arguments, which I will address in the corresponding sections below.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General of the European Commission conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

In this context, the Secretariat-General of the European Commission re-consulted the Mexican authorities based on Article 4(4) of Regulation 1049/2001 with a view to assessing whether an exception in paragraph 1 or 2 could be applicable to the requested documents, which originates from that third party.

At the confirmatory stage, the authorities of the United Mexican States continued to object to the disclosure of the documents originating from their authorities on the basis of the exception provided for in Article 4(2), first indent (protection of commercial interests, including intellectual property) of Regulation 1049/2001.

Following the confirmatory review and taking into account the reply of the Mexican authorities, I regret to inform you that I have to confirm the initial decision of the Directorate-General for Agriculture and Rural Development to refuse access, based on the exceptions of Article 4(2), first indent (protection of commercial interests, including intellectual property) and Article 4(1)(a), third indent (protection of the public interest as regards international relations) of Regulation 1049/2001, for the reasons set out below.

2.1. Protection of the public interest as regards international relations

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 [...]’.

The requested documents were submitted to the European Commission by the Mexican authorities in the context of the meetings of the Joint Committee on Spirit Drinks. They originate from the Tequila Regulatory Council that is accredited as a Verification Unit and as a Certification Organisation by the General Bureau of Standards of the Mexican Secretary of the Economy. This non-profit organisation has been accredited by the Mexican government to oversee and certify that the production, bottling and labelling of Tequila is done according to the Official Mexican Standard of Tequila. It also closely follows and monitors the enforcement of the Agreement between the European Union and the Mexican States on the mutual recognition and protection of designations for spirit drinks³.

In accordance with Article 4(4) of Regulation 1049/2001, the European Commission re-consulted the Mexican authorities at confirmatory stage. The latter expressed their renewed objection to the disclosure of the documents in question to any third parties. Therefore, the communication of these documents against the third-country partner's objection could be considered by the latter as a breach of trust and could lead to a refusal to transmit certain information to the European Commission, in particular to the Joint Committee on Spirit Drinks, in the future. It would negatively impact the functioning of the Joint Committee on Spirit Drinks and any future cooperation on geographical indications⁴ and their protection in the EU.

The requested documents list cases of alleged fraud, and brands that allegedly use and/or sell pseudo-Tequila throughout the European Union. Some of these possible fraudulent uses are already subject to legal actions taken by the Mexican authorities against Member States for Tequila piracy, on which the EU and the Mexican authorities cooperate closely and attentively follow further developments. Furthermore, both parties are examining possible actions on spirits' geographical indications.

³ Official Journal L 152, 11.6.1997, p. 16-26.

⁴ Geographical indications are an important EU policy and the EU has a clear interest in cooperating with its trade partners, especially in the framework of recognition, registration and enforcement of their protection.

I would also like to point out that Article 4(1)(a) of Regulation 1049/2001 has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

2.1. Protection of commercial interests of natural or legal person

Article 4(2), first indent of Regulation 1049/2001 stipulates 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’.

The General Court found that documents, whose disclosure would seriously undermine the commercial interests of a legal person, ‘contain commercially sensitive information relating, in particular, to the business strategies of the undertakings concerned or their commercial relations or where those documents contain information particular to that undertaking which reveal its expertise.’⁵

The requested documents contain confidential business information regarding Mexican producers of Tequila. In addition, they include the list of disputes in the EU between the Mexican authorities, the Mexican Tequila producers and the EU companies selling Tequila in the internal market of the EU without any certification and authorisation. They contain the names of products, trademarks not certified by the Mexican authorities to be sold as Tequila in the EU, the geographical areas where they can be found, information on their producers, the EU companies selling these products, actions to be taken by the Mexican authorities against them, including the proposed legal actions.

This information needs to be qualified as commercially sensitive.

It can be presumed that the Mexican authorities provided these documents that include commercially sensitive information to the European Commission under the legitimate expectation that it would not be publically released.

Therefore, there is a real and non-hypothetical risk that the disclosure of this sensitive business information, at this stage, would adversely affect the commercial interests and activities of the concerned companies, in particular in the competitive context, within the meaning of Article 4(2), first indent of Regulation 1049/2001.

3. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(2), first indent of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

⁵ Judgments of 5 February 2018, *PTC Therapeutics Ltd v European Medicines Agency*, T-718/15 EU:T:2018:66, paragraphs 84-85 and *MSD Animal Health Innovation GmbH v European Medicines Agency*, T-729/15, EU:T:2018:67, paragraphs 67– 68.

In your confirmatory application, you claim that ‘what disclosure of these allegations and/or evidence would reveal is the type of conduct in the EU which the Mexican authorities and/or Mexican Tequila producers represented by the Tequila Regulatory Council consider to be infringing on the protection they derive from 1997 Agreement. This is of interest to private stakeholders in the EU (such as consumers and potential users of the product and the name Tequila) who tries to understand the implications of this Agreement for them.’

In that regard, I would like to refer to the judgment in the *Strack* case, where the Court of Justice ruled that in order to establish the existence of an overriding public interest in transparency, it is not sufficient to merely rely on that principle and its importance. Instead, an applicant has to show why in the specific situation the principle of transparency is in some sense especially pressing and capable, therefore, of prevailing over the reasons justifying non-disclosure.⁶

In my view, such a pressing need has not been substantiated in this case. While I understand that there could indeed be a private and public interest in the subject matter covered by the documents requested, I consider that such a public interest in transparency would not, in this case, outweigh the need to protect the commercial interests of the companies concerned.

I therefore consider that in this case, the public interest is better served by keeping the requested documents undisclosed in conformity with the interests protected by the exception of Article 4(2), first indent of Regulation 1049/2001

Please note also that Article 4(1)(a), third indent of Regulation 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

4. NO PARTIAL ACCESS

In accordance with Article 4(6) of regulation 1049/2001, I have considered the possibility of granting partial access to the documents requested. However, for the reasons explained above, no meaningful partial access is possible without undermining the interests described above.

Consequently, I have come to the conclusion that the documents requested are covered in their entirety by the involved exceptions to the right of public access.

⁶ Judgment of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 131.

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,



For the Commission
Martin SELMAYR
Secretary-General