



EUROPEAN COMMISSION

Competition DG

The Director General

Brussels, 23/02/2021

COMP/H2/RP/ss

Ms Venetia Roxburgh
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Subject: Your application for access to documents – GESTDEM 2020/7917

Dear Madam,

I refer to your e-mail of 21 December 2020, registered the same day under the above mentioned reference number in which you make a request for access to documents in accordance with Regulation (EC) No. 1049/2001¹ ("Regulation 1049/2001").

1. DOCUMENTS CONCERNED

In your application you requested access to the following documents:

All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, transcripts, recordings and minutes/notes) relating to the meeting listed below:

1. Between European Round Table for Industry (ERT) and Vice-President Vestager on the 11th November 2020

2. Between Eurofer and Vice-President Vestager on the 15th June 2020.

We have identified the following documents corresponding to your request:

1. Meeting of 11 November 2020 (ERT):
 - Document 1 - Consolidated Briefing for Executive Vice-President Vestager, Meeting with Nils S. Andersen, Chair of the European Round Table Committee on Competition Policy
 - Document 2 - Ares(2020)4878086 ERT letter - Request for a meeting (ERT Letter to EVP Vestager Meeting request
 - Document 3 – Cover email ERT letter - Request for a meeting
2. Meeting of 15 June 2020 (Eurofer):
 - Document 4 - Email thread on Meeting with CEOs of Steel industry
 - Document 5 - Email entitled 'CVs + pictures - Participants zoom meeting of EVP Vestager with CEOs of the steel industry on 15 June 11h to 11h30'

¹ Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L145 of 31.5.2001, p. 43

- Document 6 - Minutes of the Meeting with EUROFER CEOs, 15 June 2020
- Document 7 - Presentation Meeting Executive VP Vestager
- Document 8 - Briefing for Executive Vice-President Vestager Videoconference meeting with A. Eggert, Director General of EUROFER 10 June 2020.

There are two types of documents responding to your request:

1. Documents that are not case-related, documents 1 to 7. I am pleased to inform you that total or partial access can be given to documents 1 to 7, with the exception of document 5 which contains only personal data, CVs and pictures of the participants to the meeting. Access to document 5 has therefore to be refused. The documents to which you have requested access contain personal data (names, e-mail accounts, phone numbers etc.). Document 1 contains also information whose disclosure would seriously undermine the Commission's decision-making process. Therefore I enclose a copy of the documents requested (except document 5), with personal data and information related to Commission's decision-making process expunged. The purpose of redactions of personal data is further explained below in Section 2a). Third parties have been consulted in accordance with Article 4(4) of Regulation 1049/2001.

You may reuse the documents to which access is granted free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse. Some of the documents were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Competition. They solely reflect the services' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer. They do not reflect the position of the Commission and cannot be quoted as such.

2. In relation to point 2 in your request, document 8 is a case-related document concerning a pending State aid investigation SA.54048 - Informal contacts and guidance for potential IPCEI on Hydrogen Technologies and Systems Value chain.

2. APPLICABLE EXCEPTIONS

a) Article 4(1)(b): Protection of privacy of individuals

A complete disclosure of the identified documents 1 to 7 is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain personal data, i.e. the names and contact information of Commission staff members not pertaining to the senior management.

In your application, you indicate that your address is in the United Kingdom. Transfers of personal data from the Commission to countries that are not members of the European Economic Area (EEA) or to international organisations are regulated under Chapter V of the Data Protection Regulation.

According to Article 47(1) of this Regulation, a transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection and where the personal data are transferred solely

to allow tasks within the competence of the controller to be carried out. Based on the information available, the country of your residence is recognised by the Commission as ensuring an adequate level of protection.

However, we would further like to inform you that Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, 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.

b) Article 4(3) protection of the institution's decision-making process

Pursuant to Article 4(3), first subparagraph, of Regulation 1049/2001 access to the documents drawn by the Commission or received by the Commission, which relates to a matter where the decision has not been taken by the institution, shall be refused if the disclosure of the document would seriously undermine the institution's decision-making process.

In the present case, document 1 contains information related to policy projects for which the decision-making process is still ongoing: Digital Markets Act and Digital Services Act, White Paper on Foreign Subsidies and Review of the Market Definition Notice. The Commission has carried out public consultations in relation to these initiatives. Based on the evaluation of the results of the public consultations, the preparation of the legislative proposals to be presented is fully ongoing. As the process of evaluation and preparation of legislative acts is not yet finalised, disclosing internal assessments would clearly seriously undermine the Commission's decision-making process. Therefore, the exception set out in Article 4 (3), first sub-paragraph of the Regulation is manifestly applicable to document 1, access to which is requested.

c) Case-related document under point 2 of the request

The document 8 under point 2 of your request relates to a pending State aid investigation in which no final decision has yet been adopted by the Commission.

Having carefully examined your request in the light of Regulation 1049/2001, I have come to the conclusion that the document you have requested access to falls under the exceptions of Article 4 of Regulation 1049/2001. Access to this document, therefore, has to be refused. Please find below the detailed assessment as regards the application of the exceptions of Article 4 of Regulation 1049/2001.

As the effects of granting access to documents under Regulation 1049/2001 are *erga omnes*, in the sense that such documents become public, the disclosure of the requested document at this stage might hurt the protection of lawful interests, as set forth in Article 4 of Regulation 1049/2001. Once access is granted, any potential requester receives access to the document in question, irrespective of its legal

standing, involvement in the competition case or not or other specific interests it may have, as "*the purpose of the regulation is to guarantee access for everyone to public documents and not just access for the requesting party to documents concerning it*".²

Article 4(2), third indent, protection of the purpose of investigations and Article 4(3) protection of the institution's decision making process

Pursuant to Article 4(2), third indent of Regulation 1049/2001 the Commission shall refuse access to a document where its disclosure would undermine the protection of the purpose of inspections, investigations and audits.

Pursuant to Article 4(3), access to the documents drawn by the Commission or received by the Commission shall be refused if the disclosure of the documents would seriously undermine the Commission's decision making process.

These exceptions aim at protecting the Commission's capacity to ensure that Member States and undertakings comply with their obligation under European Union law. For the effective conduct of pending investigations it is of utmost importance that the Commission's investigative strategy, preliminary assessments of the case and planning of procedural steps remain confidential.

In *TGI*³, a case which concerned an access to documents request to all documents in two State aid cases, the Court of Justice upheld the Commission's refusal and held that there exists with regard to the exception related to the protection of the purpose of investigations a general presumption that disclosure of documents in the file would undermine the purpose of State aid investigations. The Court reasoned that this follows from the fact that under the State aid procedural rules the interested parties, other than the Member State concerned, have no right to consult the documents in the administrative file and should such access be granted under Regulation 1049/2001 the nature of the procedure is likely to be modified and thus the system for review of State aid would be called into question⁴. This line of reasoning was upheld by the Court in *Sea Handling v Commission* even when it comes to a reduced number of documents pertaining to a State aid file⁵.

As mentioned above, the requested document relates to a pending State aid investigation and contains information from which the direction of the investigation, the future procedural steps which the Commission may take, as well as its investigative strategy may be revealed to the public. This information could easily be misinterpreted or misrepresented as indications of the Commission's possible final assessment in this case. Such misinterpretations and misrepresentations may cause damage to the reputation and standing of the potential beneficiaries investigated, in particular if no decision is adopted establishing a violation of the competition rules.

² See Joined Cases T-110/03, T-150/03 and T-405/03, *Sison v Council*, paragraph 50; Case T-181/10, *Reagens SpA v Commission*, paragraph 143

³ See Case C-139/07 P, *Commission v Technische Glaswerke Ilmenau GmbH*

⁴ See Case C-139/07 P, *Commission v Technische Glaswerke Ilmenau GmbH*, paragraphs 58-59

⁵ See Case T-456/13, *Sea Handling SPA v Commission*, paragraphs 55-58 and 61

The requested document would reveal the Commission's investigation strategy and its disclosure would therefore undermine the protection of the purpose of the investigation and would also seriously undermine the Commission's decision making process. The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure.

In view of the foregoing, the requested document is manifestly covered in its entirety by the exception related to the protection of the purpose of the Commission's State aid investigations set out in Article 4(2), third indent of Regulation 1049/2001. Moreover, the internal Commission document is also covered by the exception related to the protection of the Commission's decision-making process, set out in Article 4(3) of Regulation 1049/2001.

Article 4(2), first indent, protection of commercial interests

Pursuant to Article 4(2), first indent of Regulation 1049/2001 the Commission shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person.

Economic entities have a legitimate commercial interest in preventing third parties from obtaining strategic information on their essential, particularly economic interests and on the operation or development of their business. Moreover, the assessments made by the Commission and contained in Commission's documents are commercially sensitive, particularly at a stage where an investigation has not been finally concluded yet.

The document requested by you, as specified above, is part of the file in a competition case, has not been brought into the public domain and is known only to a limited number of persons. In particular, the document you request access to contains commercial and market-sensitive information regarding the activities of the company, whose public disclosure would undermine its commercial interests. Disclosure of this document could bring serious harm to the undertaking's commercial interests.

In view of the foregoing the requested document is covered by the exception set out in Article 4(2), first indent of Regulation 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Pursuant to Article 4(2) and (3) of Regulation 1049/2001, the exception to the right of access contained in that Article must be waived if there is an overriding public interest in disclosing the documents requested. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public (as opposed to private interests of the applicant) and, secondly, overriding, *i.e.* in this case it must outweigh the interest protected under Article 4(2), first and third indents, and 4(3) of Regulation 1049/2001.

In your application you have not established arguments that would present an overriding public interest to disclose the documents to which access has been hereby denied. Consequently, the prevailing interest in this case lies in protecting the effectiveness of the Commission's investigations, its decision-making process and the commercial interests of the undertaking concerned.

4. PARTIAL ACCESS

I have also considered the possibility of granting partial access to document 8 for which access has been denied in accordance with Article 4(6) of Regulation 1049/2001. However, the general presumption of non-disclosure invoked above also applies to partial disclosure for the documents concerned and, consequently, no partial access can be granted.

5. MEANS OF REDRESS

If you want this position to be reviewed you should write to the Commission's Secretary-General at the address below, confirming your initial request. You have fifteen (15) working days in which to do so from receipt of this reply after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within fifteen (15) working days from the registration of your request, either granting you access to the documents or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to 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.

Yours faithfully,

e-signed
Olivier GUERSENT

Enclosure: copies of 6 documents