



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

Directorate C – Africa, Caribbean and Pacific, Asia (II), Trade and Sustainable Development, Green Deal
Multilateral Trade and Sustainable Development Policy, Green Deal, Conflict Minerals

Brussels
C.4/TGP-bd (2021) 5070892

Ms Belen Balanya
Corporate Europe Observatory
Rue d'Edimbourg 26
1050 Brussels

By email only:
ask+request-9442-d0d95e5e@asktheeu.org

Dear Ms Balanya,

I refer to your application dated 06/05/2021, in which you make a request for access to documents under Regulation (EC) No 1049/2001¹ ('Regulation 1049/2001'), registered under the above mentioned reference number.

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

In your request, you asked for access to:

*1- all correspondence (including email) between **1st January 2021 and 6th May 2021** between Commissioner Simson, Commissioner Timmermans, Commissioner Breton, President van der Leyen, **Commissioner Dombrovskis**, and/or their cabinets and/or officials from DG Energy, DG Clima, DG Grow, **DG Trade** and Secretariat General on one hand and stakeholders on the other, where the issue of the carbon border adjustment mechanism is addressed.*

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

2 - list of meetings/videocalls/calls between 1st December 2020 and 6th May 2021 between officials and/or representatives of the European Commission and stakeholders where the issue of the carbon border adjustment mechanism is addressed.

3 - minutes of the meetings/videocalls/calls mentioned above.

In this letter we will provide you with the requested elements concerning Executive Vice-President Dombrovskis and his Cabinet as well as officials from DG Trade. Separate replies will be issued by the other Commission services concerned by your inquiry.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law², 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.

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 pose 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 Article 4(2) and Article 4(3) of Regulation 1049/2001, the institution is required "*to ascertain whether there is any overriding public interest justifying disclosure*"³.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents⁴, '*the exceptions to that right [...] must be interpreted and applied strictly*'⁵.

In reply to your request, I can inform you that we have identified **14 documents** that fall within the scope of your request. The identified documents are listed for ease of reference in Annex I. For each of the documents the Annex provides a description and indicates whether parts are withheld on which ground pursuant to Regulation 1049/2001.

Having examined the requested documents under the applicable legal framework, I am pleased to grant you partial access to **documents 1 to 6 and 8 to 14**. In these documents names and other personal data have been redacted pursuant to article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 2018/1725. Hence, the main content of these documents relevant to your request is accessible.

² Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

³ *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52-64.

⁴ See Regulation 1049/2001, recital (4).

⁵ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

Listed under document 7 is a link to a video which is available online.

Copies of the accessible documents are enclosed to this letter. The reasons justifying the application of the exception concerning personal data are set out below.

Protection of the privacy and integrity of the individual (documents 1-6 and 8-14)

Pursuant to Article 4(1)(b) of Regulation 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.⁶

Documents 1-6 and 8-14 contain personal information, such as names, e-mail addresses, telephone numbers that allow the identification of natural persons, as well as other personal information.

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.⁷ 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.⁸

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁹, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable¹⁰

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'*.

⁶ The applicable legislation is Regulation (EC) No 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/EC ('Regulation 2018/1725').

⁷ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case [C-434/16](#), Peter Novak v Data Protection Commissioner, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

⁸ 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.

⁹ 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.

¹⁰ 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.

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 application, you do not put forward any arguments to establish the necessity to have the 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 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.

However, in line with the Commission's commitment to ensure transparency and accountability, the names of the Members of Cabinet and the names of the senior management of the Commission are disclosed. Additionally, signatures have been removed also to avoid the risk of fraudulent use of such signatures.

Please note that documents originating from third parties are disclosed to you based on Regulation 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Some of the identified documents are minutes or a summary record of a meeting with external parties. Please note that these documents were drawn up for internal use under the responsibility of the relevant officials of the Directorate-General for Trade. It solely reflects the service's author's interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which was not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

1. MEANS OF REDRESS

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:

Secretary-General
European Commission
Transparency, Document Management & Access to Documents
Rue de la Loi 200/Wetstraat 200
BERL 7/76
1049 Brussels

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

Yours sincerely,

Madelaine TUININGA
Head of Unit

Enclosure: Annex I: List of documents
 Documents (partially) released