



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels
SANTE.A.1/

***By registered letter
with acknowledgment of receipt¹***
Ms KNAEBEL Rachel
5, avenue Paul Langevin 93100,
Montreuil
France

Advance copy by e-mail:
ask request-9536-0fb00ade@asktheeu.org

Dear Madam,

Subject: Your application for access to documents – GESTDEM 2021/3467

We refer to your email of 20 May 2021 in which you make a request for access to documents, registered on 25 May 2021 under the above-mentioned reference number.

We also refer to our email of 17 June 2021 extending the time limit to respond to your request according to Article 7(3) of Regulation (EC) No 1049/2001.

1. Scope of your request

You requested access to:

“- a list of all meetings between DG SANTE staff (below the level of Commissioner, cabinet, and Director-General, which are already available online) and the American Chamber of Commerce to the European Union (AmCham EU), McKinsey & Company, and/or McKinsey Global Institute, since 1 January 2020;

- minutes of, and correspondence relating to, those meetings”.

2. Identification and assessment of relevant documents

We have identified 23 documents that fall within the scope of your request.

Since some documents originate from a third party in accordance with Art. 4(4) of Regulation, the originator of the documents has been consulted in order to assess whether an exception established in Article 4 applies to these documents.

¹ According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.

Having examined the document under the provisions of Regulation (EC) No 1049/2001 and considered the opinion of the third party, we have come to following conclusion, which is further explained below:

- documents No 1 to 9, 11, 13, 15 to 18, 19.1, 19.3 and 20 to 23 may be partially disclosed as their full disclosure is prevented by one exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.
- no access can be granted to documents No 10, 12, 14 and 19.2 as their disclosure is prevented by an exception to the right of access laid down in Article 4 of the Regulation.

We enclose a copy of the documents redacted of the parts that cannot be disclosed, as further explained below.

Please note that in document 3 parts falling outside the scope of the request have been redacted and labelled “out of scope”.

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the Commission Decision 2011/833/EU on the reuse of Commission documents. You may reuse the documents disclosed free of charge and 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 documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that documents originating from third party are disclosed to you based on Regulation (EC) No 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.

As to the minutes or a summary record of a meeting with external parties, these documents were drawn up for internal use under the responsibility of the relevant services/officials of the Directorate-General for SANTE. They solely reflect the services’/ author's interpretation of the interventions made and do not set out any official position of the third parties to which the document refers, which was not consulted on its content. They do not reflect the position of the Commission and cannot be quoted as such.

3. Partial disclosure of documents

- a) Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001*

With regard to the documents No. 1 to 9, 11, 13, 15 to 18, 19.1, 19.3 and 20 to 23, a complete disclosure of the documents 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 the following personal data:

- the names/initials and contact information of staff of national authorities.
- the names/initials and contact information of staff of other natural persons.
- handwritten signatures/abbreviated signatures of natural persons.

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, we 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.

In accordance with the above mentioned, partial access is granted to the mentioned documents, expunged of personal data.

b) Protection of the commercial interests of a legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001

i. With regard to the documents No. 9, 11, 13, 15 and 16 a complete disclosure of the documents is prevented by the exception concerning the protection of the commercial interests of a legal person, as laid down in the Article 4(2), first indent, of Regulation (EC) No 1049/2001. We consider that granting access to this information could undermine the protection of the commercial interests of Mc Kinsey.

The principal objective of Union rules in the field of public procurement is the opening-up of public procurement to undistorted competition in all the Member States. We consider that granting access to this information in the context of the performance of public contracts could undermine the protection of the commercial interests of the bidders, as putting information related to the particular details of a bid in the public domain would affect their competitive position on the market.

This third party has objected to the disclosure of these documents invoking the argument that their disclosure may undermine the commercial interest of a legal person.

Therefore, having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to parts of the documents you requested access to.

In accordance with the above mentioned, partial access is granted to the mentioned documents expunged of information that may undermine the protection of the commercial interests of Mc Kinsey.

ii. With regards to the document No 19.1 a complete disclosure of the document is prevented by the exception concerning the protection of the commercial interests of a legal person, as laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001. We consider that granting access to this information could undermine the protection of the commercial interests of Mc Kinsey.

This third party has objected to the disclosure of document No 19.1 invoking the argument that its disclosure may undermine the commercial interest of a legal person as

the documents contains details which allow for drawing conclusions about McKinsey's strategic focus and approach in their client work.

Having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001 applies to the concerned document.

Therefore, having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001 applies to parts of the document No 19.1 you requested access to.

In accordance with the above mentioned, partial access is granted to the document expunged of information that may undermine the protection of the commercial interests of Mc Kinsey.

4. Refusal of documents

Protection of the commercial interests of a legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001

i. The documents 10, 12, 14, contain information whose disclosure may undermine the commercial interest of a legal person, and it may include business sensitive information and information covered by intellectual property.

Documents 10, 12, 14 include information originated with the third party; informed of the present request for this access to documents, the third party has been consulted and has objected to the disclosure of the documents in question, alleging that disclosure would put in the public domain business sensitive information and risk resulting in potential adverse impacts on their competitive position on the market.

Having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001 applies to the concerned documents.

We have considered whether partial access could be granted to these documents. However, we have come to the conclusion that the documents are entirely covered by the above exception to the right of access to documents.

Therefore, no access can be granted to documents 10, 12 and 14.

ii. Doc. 19.2 contains details which allow for drawing conclusions about McKinsey's strategic focus and approach in their client work which is commercially sensitive, proprietary and confidential to McKinsey.

Having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001 applies to the concerned document.

We have considered whether partial access could be granted to this document 19.2. However, we have come to the conclusion that this document is entirely covered by the above exception to the right of access to documents.

Therefore, no access can be granted to document 19.2.

5. Overriding public interest

The exceptions to the right of access provided for in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in

disclosing the requested document. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

6. Means of redress

In accordance with Article 7(2) of Regulation (EC) No 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
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,

Sandra GALLINA
Director-General

Enclosure: List of the documents and disclosed documents