



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Director-General

Brussels,
JUST.01.002(2022)243456

Ms Rachel COX
By e-mail:
[ask+request-9830-
296a88c8@asktheeu.org](mailto:ask+request-9830-296a88c8@asktheeu.org)

Subject: Your application for access to documents – Ref GestDem No 2021/5338

Dear Ms COX,

We refer to your e-mail of 4 August 2021 in which you make a request for access to documents, registered on 1 September 2021 under the above mentioned reference number.

You request access to:

“All documents – including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2021-06-29 between Didier Reynders and Deutsche Telekom”.

Your application concerns the following documents:

- briefing for the meeting with Deutsche Telekom representative;
- the minutes of the meeting with Deutsche Telekom representative held on 29/06/2021.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we would like to inform you that disclosure of some parts of the documents is prevented by exceptions to the right of access laid down in:

- Article 4(1)(a) third indent (protection of the public interest as regards international relations);
- Article 4(1)(b) (protection of the privacy and integrity of the individual);
- Article 4(2) first indent (protection of commercial interests);
- Article 4(3) (protection of decision-making process).

The justifications are as follow:

Protection of the public interest as regards international relations (briefing)

Article 4(1)(a), third indent, of Regulation (EC) No 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 [...]'*.

Disclosing the text on **page 12 of the briefing** would seriously prejudice the mutual trust between the European Union and the United States, both as regards the ongoing talks on a new transatlantic data transfer framework after the invalidation of the EU-U.S. Privacy Shield by the Court of Justice of the European Union and other transatlantic files. After the invalidation of the European Commission's adequacy decision 2016/1250 regarding the EU-U.S. Privacy Shield, the European Commission and the U.S. Department of Commerce are in negotiations on a strengthened transatlantic data transfer framework to comply with the judgement of the Court of Justice.

In light of these ongoing talks, it is important to protect the credibility of the European Commission as a negotiating partner. Establishing and protecting an atmosphere of mutual trust is a delicate exercise and any breach of that trust can have a serious adverse effect on the ongoing talks as well as future cooperation.

Protection of privacy and the integrity of the individual (briefing and minutes)

A complete disclosure of the both identified documents is also 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 Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other 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, 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

Protection of commercial interests

Page 11 of the briefing contains commercially sensitive business information of the company that submitted it.

Disclosure of this part of the document would undermine the protection of the commercial interests of the company that submitted it, as putting this information in the public domain would affect its competitive position on the market.

Protection of the institution's decision-making process (briefing)

Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 provides that: *“Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure”*.

Pages 10-11 of the briefing were drafted for internal use for reflections/deliberations/consultations on which a decision has not been taken by the Commission. Disclosure of the content would undermine the protection of the decision-making process of the Commission, as it would reveal preliminary views and policy options which are currently under consideration; the Commission's services must be free to explore all possible options in preparation of a decision free from external pressure. Therefore the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 applies to this document

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have examined whether there could be an overriding public interest in disclosure, but that you have not been able to identify such an interest.

The documents were drawn up for internal use under the responsibility of the relevant services of the Commission. They solely reflect the services' 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

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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 Secretariat-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

According to standard operational procedure, the reply to a request for access to documents is usually sent by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 pandemic, 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 by replying to JUST-ACCES-DOCUMENTS@ec.europa.eu.

Yours faithfully,

(e-signed)
Anna GALLEGO