Subject: Reply to your access to documents request registered under Gestdem 2021/6007

Dear Mr Bermingham,

Firstly, please excuse the delay in replying to your request for access to documents under Regulation (EC) No. 1049/2001 ("Regulation 1049/2001") dated 11 October 2021 and registered on the same date under the above-mentioned reference number. The delay is mainly due to the handling of a high number of access to documents requests.

1. **Scope of your request**

In your application you seek access to the following documents:

- a list of meetings of DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of individual companies, including lobby consultancies and law firms, and/or industry associations, in which the Comprehensive Agreement on Investment with China were dealt with (between January 2020 and today);

- minutes and other reports of these meetings;

- all correspondence (including emails) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of individual companies (including lobby consultancies and law firms) and/or industry associations, in which the Comprehensive Agreement on Investment with China were dealt with (between January 2020 and today);

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A list of meetings has been created for the purpose of your request, which did not represent a disproportionate administrative burden, and is provided in Annex I.

2. **ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

In accordance with settled case law, 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 1049/2001.²

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 would undermine the protection of the interest covered by the exception. Third, the risk of that interest being undermined must be "reasonably foreseeable and not purely hypothetical".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.

Your application concerns the following documents:

1) Minutes of a meeting with Digital Europe/SAP, 14 April 2020;
2) Minutes of a meeting with the European Union Chamber of Commerce in China (EUCCC), 7 July 2020;
3) Minutes of a meeting with BusinessEurope, 13 July 2020;
4) Minutes of a meeting with the European Union Chamber of Commerce in China (EUCCC) Energy working group, 19 January 2021;
5) Minutes of a meeting with Orgalim – Europe's Technology Industries, 20 January 2021;
6) Minutes of a meeting with the European Union Chamber of Commerce in China (EUCCC) Health Care working group, 21 January 2021;
7) Minutes of a meeting with the European Union Chamber of Commerce in China (EUCCC) ICT working group, 22 January 2021;

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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 and 64.
8) Minutes of a meeting with European Federation of Pharmaceutical Industries and Associations (EFPIA), 26 January 2021;

9) Minutes of a meeting with Orgalim – Europe's Technology Industries and Verband Deutscher Maschinen, 27 January 2021;

10) Minutes of a meeting with the Association of German Chambers of Industry and Commerce (DIHK), 28 January 2021;

11) Minutes of a meeting with Amadeus IT Group, 4 February 2021;

12) Letter from the PPF Group, 31 March 2021;

13) Reply to a letter from the PPF Group, 26 June 2021;

14) Letter from UNIFE, 10 May 2021;

15) Reply to a letter from UNIFE, 22 July 2021;

16) UNIFE request for a meeting with the Executive Vice-President Dombrovskis, 16 February 2021;

17) Reply by the Cabinet of the Executive Vice-President Dombrovskis to UNIFE meeting request, 23 February 2021;

18) BusinessEurope Position Paper on the “Priorities for the update of the European industrial strategy”, with reference to the EU-China Comprehensive Agreement on Investment (p.11), February 2021.

Having carefully examined your request in light of the applicable legal framework, we are happy to grant you full access to Document 18 and partial access to Documents 1 - 8, 10, 13, 15, 16 and 17. We cannot grant you access to Documents 9, 11, 12 and 14.

Please note that parts of Documents 10 and 13 have been removed since they fall out of the scope of your request.

The reasons justifying the application of relevant exception are set out below.

2.1 Protection of the privacy and the integrity of the individual (Documents 1 - 8, 10, 13, 15, 16 and 17)

Article 4.1(b) of Regulation 1049/2001 provides that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: […] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".

The Court of Justice has ruled that "where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data […] the
provisions of Regulation 45/2001, of which Articles 8(b) and 18 constitute essential provisions, become applicable in their entirety".  

Article 2(a) of Regulation 45/2001 provides that "'personal data' shall mean any information relating to an identified or identifiable natural person […]". The Court of Justice has confirmed that "there is no reason of principle to justify excluding activities of a professional […] nature from the notion of 'private life" and that "surnames and forenames may be regarded as personal data", including names of the staff of the institutions.  

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish "the necessity of having the data transferred" and additionally "if there is no reason to assume that the legitimate interests of the data subjects might be prejudiced". The Court of Justice has clarified that "it is for the person applying for access to establish the necessity of transferring that data".

Documents 1 - 8, 10, 13, 15, 16 and 17 contain names and other personal information that allows the identification of natural persons.

I note that you have not established the necessity of having these personal data transferred to you. Moreover, it cannot be assumed on the basis of the information available, that disclosure of such personal data would not prejudice the legitimate interests of the persons concerned. Therefore, these personal data shall remain undisclosed in order to ensure the protection of the privacy and integrity of the individuals concerned. On the other hand, we do disclose the names of senior management of Commission staff and members of Cabinet, as well as public figures.

If you wish to receive the personal data that have been removed, we invite you to provide the Commission with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

2.2 Protection of commercial interests (Documents 1, 9, 11, 12 and 14)

Article 4.2 first indent of Regulation 1049/2001 provides 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”.

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7 Judgment in Rechnungshof v Rundfunk and Others, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.
While not all information concerning a company and its business relations can be regarded as falling under the exception of Article 4.2 first indent,\(^\text{11}\) it appears that the type of information covered by the notion of commercial interests would generally be of the kind protected under the obligation of professional secrecy.\(^\text{12}\) Accordingly, it must be information that is "known only to a limited number of persons", "whose disclosure is liable to cause serious harm to the person who has provided it or to third parties" and for which "the interests liable to be harmed by disclosure must, objectively, be worthy of protection".\(^\text{13}\)

Two paragraphs have been removed from Document 1. They reveal the obstacles Digital Europe/SAP is confronted with in the Chinese market as well as part of its commercial strategy towards China.

Documents 9 and 11 cannot be disclosed. The documents reveals Orgalim – Europe's Technology Industries/Verband Deutscher Maschinen and Amadeus IT Group’s administrative, technical and legal barriers to access China’s market. The documents also inform about the firms’ strategic approach towards China.

Documents 12 and 14 cannot be disclosed. Document 12 releases sensitive information about PPF’s commercial activities in China and its strategic priorities. The content of Document 14 unveils commercially sensitive information on market access and refers to specific meetings and companies that could expose UNIFE’s member companies to a serious risk of retaliation. Finally, some elements have been removed from Document 15 that unveil existing trade barriers faced by UNIFE’s member companies in China and disclose their offensive commercial interests in the Chinese market.

These companies and industry associations shared this information with the Commission in confidence in order to support the EU’s objectives in the investment negotiations and to contribute to strengthen EU competitiveness internationally. There is a reasonably foreseeable and not purely hypothetical risk that revealing their commercial strategies and priorities as well as their commercially sensitive business information could undermine their commercial interests, including by impacting on their relations with third countries.

3. Overriding public interest

The exception laid down in Article 4.2 of Regulation 1049/2001 applies unless there is an overriding public interest in disclosing the documents. Such an interest must, first, be public and, secondly, outweigh the harm caused by the disclosure.

Documents 1, 9, 11, 12 and 14 pertain to confidential business information related to the commercial interests of EU companies and associations operating in China. We have considered whether the risks attached to the release of the withheld parts of Document 1,
and of Documents 9, 11, 12 and 14 are outweighed by the public interest in accessing the requested documents. We have not been able to identify any such public interest capable of overriding the commercial interests of the companies and organisations concerned. Finally, we assessed whether the release of parts of Documents 9, 11, 12 and 14 would be meaningful and, after examination, we concluded that partial access would be meaningless because the parts of the documents that could be disclosed would be of no use for the purpose of your request.

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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 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

Yours sincerely,

Sabine WEYAND

Enclosures: Annex I: list of meetings
            Annex II: list of documents
            Annex III: documents disclosed