



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate R - Resources, Inter-Institutional Relations, Communications and Civil Society
R.3 Transparency, Civil Society and Communications

The Head of Unit

Brussels
R3/MM/SL
trade.r.3(2022)1046499

***By registered letter with
acknowledgment of receipt***

Ms Venetia ROXBURGH
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Subject: Your application for access to a document– Ref GestDem 2022/0143

Dear Ms Roxburgh,

I refer to your application dated 5 January 2022, 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.

1. SCOPE OF YOUR REQUEST

In your request, you asked for access to:

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

Between Eurofer and Gints Freimanis, Cabinet member of Valdis Dombrovskis on the 3rd May 2021.”

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. 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 **one document** that falls within the scope of your request. Please be informed that the meeting on 3 May 2021 was an exchange with several different stakeholders and Eurofer was but one organisation participating in this multi stakeholder event.

Having examined the requested document under the applicable legal framework, I am pleased to grant you **partial access** to it. In the document 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 this document relevant to your request is accessible. A copy of the accessible document is enclosed to this letter.

The reasons justifying the application of the exception concerning personal data are set out below.

The document was drawn up for internal use under the responsibility of the relevant officials within the Cabinet of EVP Valdis Dombrovskis. It solely reflects the 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.

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).

2. PROTECTION OF PRIVACY AND THE INTEGRITY OF THE INDIVIDUAL, IN ACCORDANCE WITH ARTICLE 4(1)(B) OF REGULATION 1049/2001

2.1. Personal data

We disclose the document partially, as certain personal data therein required to be redacted in accordance with Article 4(1)(b) of Regulation 1049/2001, namely the names/initials and contact details of other natural persons.

To this regard 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 applicable legislation in this field is Regulation (EU) No 2018/1725⁶ (hereafter 'Regulation 2018/1725' or 'Data Protection Regulation').

Indeed, in its judgment in Case C-28/08 P (*Bavarian Lager*)⁷, the Court of Justice had ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.⁸

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.⁹ 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 data¹⁰, as well as those of individuals belonging to third parties. As already indicated above, the document contains personal information such as names or other information allowing the identification of natural persons, i.e. personal data.

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

⁶ Regulation (EU) 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, OJ L 295, 21.11.2018, p. 39.

⁷ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, point 59.

⁸ 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.

⁹ 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, points 33-35, ECLI:EU:T:2018:560.

¹⁰ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, points 43-44, ECLI:EU:T:2018:560.

2.2 Question of ‘transfer’ of personal data and conclusion

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) are regulated under Chapter V of Regulation 2018/1725.

According to Article 47(1) of Regulation 2018/1725, a transfer of personal data to a third country may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that country 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 protection¹¹.

However, Article 9(1)(b) of Regulation 2018/1725 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 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.

3. POSSIBILITY OF CONFIRMATORY APPLICATION

In case you would disagree with the assessment provided in this reply, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, 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’ (unit SG C.1)
BERL 7/076
1049 Bruxelles
BELGIUM

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

¹¹ Cf. https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en and Commission Implementing Decision (EU) 2021/1772 of 28 June 2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom, OJ L 360, 11.10.2021, p. 1.

Yours faithfully,

Michelangelo MARGHERITA
Head of Unit

Enclosure: 1 document