



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND  
TECHNOLOGY

The Director-General

Brussels,  
CNECT.R.4.001/RV

Politico  
Rue de la Loi 62  
1040 Brussels  
Belgium

***Advance copy via emails:***

[ask+request-10682-cb059bd5@asktheeu.org](mailto:ask+request-10682-cb059bd5@asktheeu.org)

[ask+request-10683-f92082d1@asktheeu.org](mailto:ask+request-10683-f92082d1@asktheeu.org)

[ask+request-10685-41d6f27a@asktheeu.org](mailto:ask+request-10685-41d6f27a@asktheeu.org)

[ask+request-10684-c27ff017@asktheeu.org](mailto:ask+request-10684-c27ff017@asktheeu.org)

Registered letter with acknowledgement of receipt

**Subject: Your applications for access to documents - GestDem 2022/0665,  
2022/0667, 2022/0673 and 2022/0693**

Dear Sir/Madam,

We refer to your emails dated 31 January 2022 wherein each of you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter 'Regulation 1049/2001'), registered under the abovementioned reference numbers. We also refer to our emails, dated 21 and 22 January 2022, whereby we informed you that the time limit for handling your applications was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

We apologize for the delay in our response.

**1. SCOPE OF YOUR APPLICATIONS**

Your applications cover the period between June 2021 and January 2022 and concern:

**GestDem 2022/0665:** *''Exchanges on TTC (Trade and Technology Council) with DG Justice & DG RTD''*

**GestDem 2022/0667:** *''Exchanges on the Transatlantic Trade & Technology Council with DG GROW & DG CLIMA''*,

**GestDem 2022/0673:** *''All briefings, minutes, scoping papers, deliverables for the EU-US Trade and Technology Council held by DG Connect''*,

**GestDem 2022/0693:** *''Exchanges on TTC with DG Trade''*

The circumstances of the introduction of these requests originating from applicants belonging to the same organisation, their timing, their scope, as well as their wording give us the impression that a very wide-scoped request was split in parts and introduced in a coordinated way as seemingly separate requests.

Given the wide-scope of your combined request and taking into account the other access to documents request (GestDem 2021/7392) submitted by another applicant belonging in your organisation and with a scope similar to the scope of the abovementioned requests we contacted you on 18 February 2022 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001 (our reference, Ares(2022)1241878). We indicated the steps that the handling of your application would entail and we concluded that according to our estimate we would be able to deal with in total a maximum of 15 documents falling within your combined wide scoped request.

You did not reply to our fair solution proposal.

In line with the principles of sound financial management and good administration to which the Commission is bound to pursuant to Article 310(5) of the Treaty on the functioning of the European Union, we are obliged to balance your interest in access against the workload resulting from the processing of your application. This is in line with the case law of the EU Courts<sup>1</sup>.

We have therefore restricted the scope of your application to what we could achieve, with DG CONNECT's scarce resources within the given timeframe as announced in our fair solution proposal.

## **2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST**

Within the given timeframe we were able to identify and assess the following documents which fall within the scope of your combined application after having been restricted as set out above:

- Minutes, 10/9/2021 (Document 1)
- Minutes, 15/9/2021 (Document 2)
- Minutes, 3/12/2021 (Document 3)
- Minutes, 18/1/2022 (Document 4)
- Minutes, 25/1/2022 (Document 5)
- Email exchange of 16-17/9/2021 (Document 6)
- Email exchange of 23/9/2021 (Document 7)

---

<sup>1</sup> Judgment of the Court of Justice of 2 October 2014 in case C-127/13, *Strack v Commission*, paragraphs 27-28

- Email exchange of 15/12/2021 (Document 8)
- Email exchange of 10/12/2021 (Document 9)
- Email of 31/1/2022 (Document 10) and the attached scoping paper (Document 11)
- Scoping paper (Document 12)
- Scoping paper, 14/9/2021 (Document 13)
- Scoping paper, 8/10/2021 (Document 14)
- Scoping paper, 14/12/2021 (Document 15)

### **3. ASSESSMENT UNDER REGULATION 1049/2001**

Having assessed the identified documents under the provisions of Regulation 1049/2001, I regret to inform you that access to the identified documents cannot be granted as they are covered by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

#### *(i) Protection of international relations*

Article 4(1)(a), third indent of Regulation 1049/2001 stipulates that access to a document shall be refused where disclosure would undermine the protection of the public interests as regards international relations.

According to settled case-law, "the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation"<sup>2</sup>. In this context, the Court of Justice has acknowledged that the institutions enjoy "a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest"<sup>3</sup>.

The identified documents are covered by the abovementioned exception of Regulation 1049/2001.

These documents relate to the EU-US Trade and Technology Council. Since there are ongoing negotiations between the EU and the US in this context, there is a concrete risk that the public disclosure of these documents would not only have a negative effect on the negotiating capacity of the EU but also affect the mutual trust between the EU and the US and thus undermine their relations. As the Court recognised in Case T-301/10 in't Veld v Commission, "[...] establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise"<sup>4</sup>.

---

<sup>2</sup> See Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

<sup>3</sup> Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

<sup>4</sup> Judgment in *Sophie in't Veld v Commission* T-301/10, EU:T:2013:135, paragraph 126.

Consequently, access to the requested documents has to be refused as there is a real and non-hypothetical risk that their disclosure would undermine the public interest as regards international relations.

*(ii) Protection of privacy and integrity of individuals*

Disclosure of the email exchanges and parts of minutes is also prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- Names, functions and contact information of Commission staff members not pertaining to the senior management
- Names of other natural persons

Article 9(1)(b) of the Data Protection Regulation<sup>5</sup> 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) Regulation 1049/2001, access cannot be granted to 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.

*(iii) Protection of the decision-making process*

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘[a]ccess 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.’

The identified documents contain sensitive information with regard to ongoing procedures in the context of the EU-US Trade and Technology Council. They also contain considerations, reflections and views of the Commission services and of other parties. This content is subject to ongoing discussions and deliberations. The risk of disclosing sensitive information regarding the Commission services’ and other parties’ preliminary views while the relevant decision-making process is still ongoing would deter them from freely expressing their opinions and having frank discussions. Speculations and misinterpretations of the public on the views, positions, considerations put forward in an early stage of the decision-making process would affect the exploration of different options and unduly restrict the Commission’s internal space to think, exposing the Commission to external pressure. Disclosure of these documents would

---

<sup>5</sup> 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.

therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

Consequently, access to the identified documents should be refused as they are also covered by the abovementioned exception of Article 4(3) first subparagraph of Regulation 1049/2001.

Please note that you can access Trade and Technology Council public documents via the following link:

<https://digital-strategy.ec.europa.eu/en/policies/trade-and-technology-council>

#### **4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exception laid down in Article 4(3) of Regulation 1049/2001 applies, unless there is an overriding public interest in the disclosure of documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of the aforementioned documents but we have not been able to identify such an interest.

#### **5. PARTIAL ACCESS**

We have considered whether partial access could be granted to the documents identified. However, no meaningful partial access is possible considering that the documents concerned are covered in their entirety by the abovementioned exceptions of Regulation 1049/2001.

#### **6. CONFIRMATORY APPLICATION**

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](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

Electronically signed

Roberto Viola