



EUROPEAN COMMISSION

Competition DG

The Acting Director General

Brussels, 24 May 2022
COMP/A4/JFG/lc – HT. 4372

Maximilian Henning
Cava de San Miguel 8, 4º centro,
28005 Madrid
Spain

By e-mail and registered mail
E-mail: ask+request-10949-
f1be7a4e@asktheeu.org

Subject: GESTDEM 2022/2006 – Your request of 5 April 2022 for access to documents pursuant to Regulation (EC) No. 1049/2001

Dear Mr Henning,

Thank you for your message of 5 April 2022 registered on 6 April 2022 under GESTDEM number 2022/2006.

1. DOCUMENTS CONCERNED

In your message you request access to all minutes, agendas, summaries, notes or memos issued before or after; documents prepared for, issued in preparation for, or exchanged during; as well as all correspondence including attachments related to the following meetings by either of the meeting parties:

- (i) 08.10.2021 meeting between Christina Holm Eiberg and the European Federation of Public Services Unions
- (ii) 14.10.2021 meeting between Penelope Papandropoulos and the European Trade Union Confederation.

The documents related to these two meetings are listed below. Please note that no minutes were drawn up for the meeting of 08.10.2021.

	Documents			
Doc n°	Meeting Date	Stakeholder	CAB member(s) present	Registered correspondence
1	08-10-2021	Dansk Metal, a Danish member of EPSU	Mette Dyrskjot, and Christina Holm Eiberg	Ares(2022)349378 E-mail exchange for a meeting with EPSU
2	14-10-2021	ETUC	EVP Margrethe Vestager, Penelope Papandropoulos and Wegner Stengg	Ares(2021)5764205 E-mail exchange for a meeting with ETUC
3				Briefing for the preparation of the meeting – Basis n° 757
4				Ares(2022)3113927 Minutes of the meeting with ETUC 14 10 2021

Having carefully examined your request in the light of Regulation 1049/2001, I have come to the conclusion that the documents you have requested access to fall under the exceptions of Article 4 of Regulation 1049/2001. The documents shared with you have been redacted in accordance with the rules set out in this Regulation.

2. APPLICABLE EXCEPTIONS

As the effects of granting access to documents under Regulation 1049/2001 are *erga omnes*, in the sense that such documents become public, the disclosure of the requested documents at this stage might hurt the protection of lawful interests, as set forth in Article 4 of Regulation 1049/2001. Once access is granted, any potential requester receives access to the documents in question as "*the purpose of the regulation is to guarantee access for everyone to public documents and not just access for the requesting party to documents concerning it*".¹

A complete disclosure of the 4 above-listed 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 personal data, namely:

- 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;

¹ See Joined Cases T-110/03, T-150/03 and T-405/03, *Sison v Council*, paragraph 50; Case T-181/10, *Reagens SpA v Commission*, paragraph 143

- other information relating to an identified or identifiable natural person (e.g. their personal phone number or position).

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.

In addition, part of the briefing for the meeting between Executive Vice-President Margrethe Vestager and ETUC on 14 October 2021 has also been redacted. This part refers to internal legal advice drawn up by the Legal Service of the Commission in course of the preparation of the Guidelines on the application of EU competition law to solo self-employed people. Since these Guidelines have not yet been adopted, public disclosure of this part of the requested document, containing preliminary views on the legal standing of the different options being contemplated, would expose the Commission and its services to undue external pressure, hence reducing its independence and its margin of manoeuvre. This would clearly seriously undermine the Commission's decision-making process. Therefore, the exception set out in Article 4(3), first paragraph of the Regulation is manifestly applicable to the part of the requested document which has been redacted. In addition, the undisclosed part pertains to the content of documents drawn up by the Commission's Legal Service and thus falls within the scope of the exception set out in Article 4(2), second indent, of the Regulation on the protection of legal advice. Its disclosure would be liable to lead the Commission's Legal Service to display reticence and caution in the future so as to not affect the Commission's decision-making capacity in areas in which it is involved in its administrative capacity. Therefore, the exception set out in Article 4(2), second indent, of the Regulation, is also applicable in this case.

Pursuant to Article 4 (2) and (3) of Regulation 1049/2001, the exception to the right of access contained in that Article must be waived if there is an overriding public interest in disclosing the documents requested. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public (as opposed to private interests of the applicant) and, secondly, overriding, i.e. in this case it must outweigh the interests protected under Article 4 (2), second indent, and 4 (3) of Regulation 1049/2001.

In your application you have not established arguments that would present an overriding public interest to disclose the part of the document to which access has been hereby

denied. Consequently, the prevailing interest in this case lies in protecting the legal advice and the effectiveness of the Commission's decision-making process.

3. MEANS OF REDRESS

If you want this position to be reviewed you should write to the Commission's Secretary-General at the address below, confirming your initial request. You have fifteen (15) working days in which to do so from receipt of this reply after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within fifteen (15) working days from the registration of your request, either granting you access to the document or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to 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.

Please note that the minutes of the meetings were drawn up for internal use under the responsibility of the relevant Cabinet. They solely reflect the 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 were not consulted on its content. They do not reflect the position of the Commission and cannot be quoted as such.

Yours faithfully,

E-signed

Linsey MCCALLUM

(on behalf of Olivier GUERSENT)