Subject: Your application for access to documents – Ref GestDem 2022/3031

Dear Ms Palstra,

I refer to your application dated 24 May 2022, in which you make a request for access to documents under Regulation (EC) No 1049/20011 (‘Regulation 1049/2001’), registered on 25 May 2022 under the above-mentioned reference number.

1. **SCOPE OF YOUR REQUEST**

In your request, you asked for 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 2022-03-28 between Elina Melngaile and Zaneta Vegnere and Microsoft Corporation.’

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

In accordance with settled case law\(^2\), 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 poses 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 documents\(^4\), ‘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 **two documents** that fall within the scope of your request:

**Document 1:** Request for Meeting 7 February 2022 – Ares (2022)899 188  
**Document 2:** Minutes of Meeting 28 March 2022 – Ares (2022)4387646.

Copies of the accessible documents are enclosed to this letter.

Having examined the requested documents under the applicable legal framework, I am pleased to grant you partial access to **both documents**. In **both documents** 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 these documents relevant to your request is accessible.

In **document 2**, in addition to personal data, further information was redacted as it is covered by the exception set out in article 4(1)(a) third indent of Regulation 1049/2001 (protection of the public interest as regards international relations).

Please note that parts of **document 2** that do not relate to your request have also been redacted as falling out of scope.

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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 52-64.


The reasons justifying the application of the above-mentioned exceptions are set out below in sections 2.1, and 2.2.

2.1 **PROTECTION OF THE PUBLIC INTEREST AS REGARDS INTERNATIONAL RELATIONS (DOCUMENT 2)**

Article 4(1)(a), third indent, of Regulation 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: the public interest 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 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’⁶. 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’⁷.

The part of the document redacted on the basis of the Art 4.1(a) third indent presents internal commentary on the relations between the EU and the US, disclosure of which would undermine the protection of the public interest as regards international relations. Such disclosure would jeopardise the mutual trust between the EU and the partner country, in this case the US.

2.2 **PROTECTION OF THE PRIVACY AND INTEGRITY OF THE INDIVIDUAL (DOCUMENTS 1+2)**

Pursuant to Article 4(1)(b) of Regulation 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EC) No 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/EC⁸ (‘Regulation 2018/1725’).

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Both documents contain personal information, such as names, e-mail addresses, telephone numbers that allow the identification of natural persons, as well as other personal information.

Indeed, 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 data.10

In its judgment in Case C-28/08 P (Bavarian Lager)11, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.12

Pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’. Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

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12 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.
In your application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

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.

However, in line with the Commission’s commitment to ensure transparency and accountability, the names of the Members of Cabinet and the names of the senior management of the Commission are disclosed.

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Document 2 was drawn up for internal use under the responsibility of the relevant official of the Executive Vice-President’s Cabinet. 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 were not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.
3. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation 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 Secretary-General of the Commission at the following address:

Secretary-General
European Commission
Transparency, Document Management & Access to Documents
BERL 7/76
Rue de la Loi 200/Wetstraat 200
1049 Brussels
Belgium

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

Yours sincerely,

Sabine WHEYAND

Enclosures: 2 documents (partially) released