



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels
TRADE/SW/ B3 (2022) 6699285

Ms Sarah Anne Aarup
Politico
Rue de la Loi 62
1000 Brussels

***By email only – with request for
explicit acknowledgment of receipt
by email reply:***

ask+request-11655-eb1d5e56@asktheeu.org

Subject: Your application for access to documents – GestDem-EASE 2022/4431

Dear Ms Aarup,

I refer to your application dated 29 July 2022, in which you make a request for access to documents under Regulation (EC) No 1049/2001¹ ('Regulation 1049/2001'), registered on the same date under the above mentioned reference number. Please accept our apologies for the delay in preparing the reply to your request.

1. SCOPE OF YOUR REQUEST

In your request, you asked for access as follows:

'(i) a list of meetings of DG Trade officials and/or representatives (including the Commissioner and his Cabinet) and representatives of Pfizer, BioNTech, Moderna, AstraZeneca, GSK, Sanofi, or Merck since 1 September 2020.

(ii) minutes and any other records of these meetings.

(iii) all correspondence (including emails) between DG Trade officials and/or representatives (including the Commissioner and Cabinet) and representatives of the companies listed above since 1 September 2020 regarding intellectual property, patents, or the proposed TRIPS waiver at the WTO. Please include all correspondence in which these topics are mentioned, even if they are not the main topic of the correspondence.'

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 (Official Journal OJ L 145, 31.5.2001, p. 43).

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. If the institution takes the view that disclosure would undermine the protection of any of the interests defined under Article 4(2) of Regulation 1049/2001, the institution is required ‘*to ascertain whether there is any overriding public interest justifying disclosure*’.⁴

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents⁵, ‘*the exceptions to that right [...] must be interpreted and applied strictly*’⁶.

In reply to your request **16 documents** have been identified.

Having examined the requested documents under the applicable legal framework, I am pleased to grant you full access to **documents 3, 6 and 11**, and partial access to **documents 1, 2, 4, 5, 7-10 and 12-16**. For your convenience, the documents are listed in Annex I to this reply.

In the 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 10**, in addition to personal data, additional information required redaction, as this additional information is covered by the exception under Article 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property).

The reasons justifying the application of the two exceptions referred to above are set out below.

Please also note that with respect to the requests for meetings included in **documents 12, 14 and 15 concerning** Executive Vice-President Dombrovskis or his Cabinet, I enquired with the Cabinet and was informed that no meetings were actually organised.

² Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, point 35.

³ *Id.*, points 37-43. See also judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, points 52 and 64.

⁴ *Id.*, points 37-43. See also judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, points 52 and 64.

⁵ Recital (4) of Regulation 1049/2001.

⁶ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, point 66.

2.1. PROTECTION OF THE PRIVACY AND INTEGRITY OF THE INDIVIDUAL (DOCUMENTS 1, 2, 4, 5, 7-10 AND 12-16)

With regard to **documents 1, 2, 4, 5, 7-10 and 12-16** a partial release is granted, but a complete disclosure of the identified 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 1049/2001, because they contain the following personal data:

- 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;
- handwritten signatures/abbreviated signatures and/or other handwritings of natural persons.

Under 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 currently applicable legislation regarding the protection of personal data is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018⁷ ('Regulation 2018/1725').

Article 3(1) of Regulation 2018/1725 states that personal data *'means any information relating to an identified or identifiable natural person [...]'*. The Court of Justice has indicated 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.⁸ Names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are thus to be considered personal data.⁹

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 contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and as there is no reason to think that the legitimate interests of the

⁷ 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 205, 21.11.2018, p. 39.

⁸ See judgment in *Nowak*, C-434/16, EU:T:2018:560, points 33 to 35.

⁹ Judgment in *Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, T-39/17, EU:T:2018:560, points 43 and 44.

individuals concerned would not be prejudiced by disclosure of the personal data concerned.

2.2. PROTECTION OF COMMERCIAL INTERESTS (DOCUMENT 10)

2.2.1. Relevance of Article 4(2), first indent of Regulation 1049/2001 in relation to document 10

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'*.

While not all information concerning a company and its business relations can be regarded as falling under the exception of Article 4(2), first indent¹⁰, 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 secrecy¹¹. 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'*¹².

The requested document refers to publicly undisclosed information on contractual arrangements between private parties. The release of such information would undermine the protection of the commercial interests of those parties.

2.2.2. Overriding public interest

The exception laid down in Article 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the document. Such an interest must, first, be public and, secondly, outweigh the harm caused by disclosure.

Accordingly, we have considered whether the risks attached to the release of the withheld part of the **document 10** are outweighed by the public interest in accessing the requested document. We have not been able to identify any such public interest capable of overriding the commercial interests of the companies concerned. In the present case, there is no such evidence.

3. DISCLAIMER(S)

Please kindly pay attention to the following: you may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf, based on [Commission Decision 2011/833/EU of 12 December 2011 on the re-use of](#)

¹⁰ Judgment in *Terezakis v Commission*, T-380/04, EU:T:2008:19, point 93.

¹¹ See Article 339 of the Treaty on the Functioning of the European Union.

¹² Judgment in *Bank Austria v Commission*, T-198/03, EU:T:2006:136, point 29.

[Commission documents](#)¹³. You may reuse the documents disclosed free of charge for non-commercial and commercial purposes, provided that the source is acknowledged, and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume any liability stemming from the reuse.

Furthermore, please note that documents containing content of third party origin, i.e. either documents originating from third parties or documents containing parts of third party origin are disclosed to you based on Regulation 1049/2001. However, disclosure of such third party content is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from the reuse of those documents or parts of documents.

4. POSSIBILITY OF A CONFIRMATORY APPLICATION

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 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 Brussels

Belgium

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

Yours sincerely,



Sabine WEYAND

Enclosures (16): Annex with list of documents
 16 documents (thereof 13 partially redacted)

¹³ OJ L 330, 14.12.2011, p. 39.