Subject: Your application for public access to documents – EASE 2024/1737

Dear Mr Vranken,

I refer to your email application dated 26 March 2024, in which you make a request for access to documents under Regulation (EC) No 1049/2001 (‘Regulation 1049/2001’), registered on 27 March 2024 under the above-mentioned reference number. Please accept my apologies for the delay in preparing the reply to your request.

1. SCOPE OF YOUR REQUEST

In your request, you asked for public access as follows:

'Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting all documents (starting from 01/01/2024) related to meetings between representatives of DG Trade and industry actors (including trade associations, law firms and individual companies) with regard to the EU-US Trade and Technology Council.

These documents should include:
- all agendas for each of these meetings;
- any record of the aforementioned meetings. This may include, but not necessarily be limited to, minutes of the meetings, verbatim reports of the meetings, transcripts etc, that would provide a record of the proceedings of the meetings;


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- all documents prepared or received for the purpose of these meetings and/or distributed among the attendees before or during the course of these meetings (such as but not limited to handouts, leaflets, briefings or background notes);
- all correspondence sent or received in preparation for these meetings and/or in order to arrange these meetings, including all attachments;
- all documents prepared or received with regards to and/or as a follow up to these meetings;
- all correspondence sent or received with regards to and/or as a follow up to these meetings, including all attachments.'

As regards the time frame of your application, we understand that it refers to documents up to the date of submission of your initial request, i.e. up to 26 March 2024.

DG TRADE has identified 14 documents that fall within the scope of your request. For details and numbering I refer you to the enclosed Annex 'List of identified documents and type of disclosure'.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

Having examined the requested documents under the applicable legal framework, partial public access is granted to documents 1-4, 6, 7 and 9-14.

In documents 1-4, 6, 7 and 9-14, 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. Article 4(1)(b) of Regulation 1049/2001 applies also to parts of documents 5 and 8, which are in their entirety withheld because of additional reasons explained more in detail further below. The reasons justifying the application of the privacy and personal data exception are set out below under point 2.1.

With regard to documents 3, 7, 10, 11 and 13, we would like to inform you that certain information requires protection and redaction, in line with the exception under Article 4(1)(a), third indent (international relations) of Regulation 1049/2001. Specifically for documents 5 and 8, we would like to inform you that the documents in question cannot be released, as – besides the necessary protection of personal data (see above) – the disclosure would undermine the protection of the public interest as regards the European Union (EU) international relations, as set out in the exception of Article 4(1)(a), third indent (international relations) of Regulation 1049/2001. The reasons justifying the application of the latter exception are set out below under point 2.2.

Moreover, for parts of document 5, we would like to inform you that additional information required protection, in line with the exception under Article 4(3), second subparagraph of Regulation 1049/2001, concerning documents drawn up by an institution containing opinions for internal use. The reasons justifying the application of the latter exception are set out below under point 2.3.

As regards documents 3, 6, 7 and 9, further information required redaction, in line with the exception under Article 4(2), first indent of Regulation 1049/2001 (protection of commercial interests of a natural or legal person, including intellectual property). The
reasons justifying the application of the latter exception, are set out below under point 2.4.

Furthermore, documents 3, 6, and 10-13 contain parts that are outside of the scope of your request. These parts are accordingly redacted and marked as ‘out-of-scope’ in the respective documents.

2.1. PROTECTION OF THE PRIVACY AND INTEGRITY OF THE INDIVIDUAL –

ARTICLE 4(1)(b) OF REGULATION 1049/2001 (DOCUMENTS 1-4 AND 6-14)

Documents 1-4 and 6-14 contain personal data, which require protection. For these documents a partial release can be granted (with the exception of document 8, which is entirely withheld for other reasons explained below under points 2.2 and 2.6), but a complete disclosure of the identified documents is not possible due to the protection of privacy and the integrity of the individual as outlined in Article 4(1)(b) of Regulation 1049/2001 as these documents contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to senior management;
- the names/initials and contact details of other 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 20182 (‘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.3 Names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are thus to be considered personal data.4

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

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

4 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.
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 individuals concerned would not be prejudiced by disclosure of the personal data concerned.

2.2. PROTECTION OF THE PUBLIC INTEREST AS REGARDS INTERNATIONAL RELATIONS – ARTICLE 4(1)(A) OF REGULATION 1049/2001 (DOCUMENTS 3, 5, 7, 8, 10, 11 AND 13)

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’. 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’.

Only partial access can be granted to briefings that served to prepare for meetings with industry stakeholders related to the EU-US Trade and Technology Council (hereafter ‘TTC’), i.e. to documents 3, 10 and 11. These documents contain information pertaining to the preparation of TTC ministerial meetings, assessment of the anticipated outcomes of the ministerial meetings as well as evaluations of positions taken by the EU and/or the United States (‘US’) or industry stakeholders, with respect to the TTC and more generally the future of EU-US cooperation. Disclosure of such information would undermine the protection of the public interest as regards international relations, because this information – if disclosed – would put in the public domain the Commission’s assessment of TTC ministerial meetings and prospects for progress in the relevant work streams and the EU’s priorities for collaboration in the TTC. Disclosure would risk harming the EU’s interests and relations with the US. Therefore, only information available in the public domain or information that does not undermine the public interest of the Union regarding EU-US cooperation in the TTC, has been disclosed.

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5 Judgment in Sison v Council, C-266/05 P, EU:C:2007:75, point 35.
Only partial access can be granted to reports of meetings with industry stakeholders related to the TTC, i.e. to documents 7 and 13, because these documents contain information referring to specific positions taken by the EU or the US with respect to the TTC and internal deliberations and views of participants of the reported meetings. Disclosure of this information would undermine the protection of the public interest as regards the EU’s international relations. Specifically, it would risk undermining the EU’s interests in relation to the collaboration with the US. Furthermore, the referred documents contain information provided by industry stakeholders as regards the ongoing workstreams of the TTC, which if disclosed, would undermine the relationship of trust between the Commission and its stakeholders and ultimately could undermine the EU’s interests in relation to the US as well as other third countries. In the case of document 5, the above considerations lead to the withholding of the entire document, as subsequent to the necessary redactions, no meaningful content for public release has remained.

As part of one of the Commission’s exchanges with stakeholders, one industry stakeholder summarized in the form of a PowerPoint presentation (document 8) its views and positions regarding the policy priorities of a third country partner and the implications for relations with the EU. Disclosure of this information would undermine the protection of the public interest as regards international relations. In addition, disclosure would put in the public domain internal working assessments of the industry stakeholders regarding present and future priorities of the transatlantic partnership. Thus, disclosure would risk harming the EU’s relations and collaboration with the US. Therefore, we consider the confidentiality of document 8 is fully protected by a coherent application of Article 4(1)(a), third indent of Regulation 1049/2001. Hence, public access to this document has also to be entirely refused.

2.3. PROTECTION OF OPINIONS FOR INTERNAL USE – ARTICLE 4(3), SECOND SUBPARAGRAPH OF REGULATION 1049/2001 (DOCUMENT 5)

Article 4(3), second subparagraph of Regulation 1049/2001 states that ‘Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure’.

Document 5 is a report of a meeting with EU semiconductor companies on legacy chips. One paragraph in the report makes an internal assessment of the information received during the meeting. Notably, it provides wider context regarding the situation in the semiconductor sector and sets out possible next steps for the cooperation on semiconductors in the TTC. Accordingly, that specific paragraph of this report contains opinions for internal use as part of deliberations and preliminary consultations within DG TRADE. Therefore, we consider the confidentiality of that specific part of document 5 to be protected by Article 4(3), second subparagraph of Regulation 1049/2001. Hence, this particular part of document 5 requires specific protection under Article 4(3), second subparagraph of Regulation 1049/2001.
2.4. PROTECTION OF COMMERCIAL INTERESTS – ARTICLE 4(2), FIRST INDENT OF REGULATION 1049/2001 (DOCUMENTS 3, 6, 7 AND 9)

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 indent⁷, 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 secrecy⁸. 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 protection⁹'.

Parts of the requested meeting records (documents 3, 6, 7, and 9) refer to publicly undisclosed information regarding business presence, investments and production strategies of industry stakeholders in the territory of the EU, North America as well as information relating to their market competitors and trade-related irritants in the relevant industry sectors. Furthermore, they contain information on the stakeholders’ assessments of international, domestic as well as other relevant developments or policy actions that impact or may impact international trade in those sectors with relevance to the ongoing collaboration with the US in the framework of the TTC. The release of this information would undermine the protection of the commercial interests of those stakeholders.

2.5. NO OVERRIDING PUBLIC INTEREST

The exceptions of Article 4(2), first indent of Regulation 1049/2001 (protection of commercial interests of a natural or legal person, including intellectual property) and of Article 4(3), second subparagraph (opinions for internal use) of Regulation 1049/2001 apply, unless there is an overriding public interest justifying the disclosure of the document. If, firstly, an overriding public interest exists, it would secondly have to outweigh the harm caused by the requested disclosure.

Accordingly, we have carefully considered, whether the risks attached to the release of the withheld parts of documents 3, 5, 6, 7 and 9 are outweighed by an overriding public interest in granting access to the requested documents. We have not been able to identify any such public interest capable of overriding the protection of the commercial interests of the companies concerned or of overriding the protection of the opinions drawn for internal use, respectively.

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⁸ See Article 339 of the Treaty on the Functioning of the European Union.
2.6. QUESTION OF PARTIAL ACCESS (DOCUMENTS 5 AND 8)

We have considered whether partial access could be granted to documents 5 and 8. However, partial access to documents 5 and 8 would be meaningless after expunging the information requiring protection.

3. DISCLAIMER

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 Commission documents¹⁰. 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, documents 1-4, 6, 7 and 9-14 were drawn up under the responsibility of the relevant Commission official(s). Such type of document solely reflects the author’s interpretation of the interventions made and does not set out any official position of any third party/parties to which the document may refer, which was/were not necessarily consulted on its content. Such type of document does also not necessarily reflect the position of the Commission, and, therefore, cannot be quoted as such.

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, by either

- **asking for a review via your portal**¹¹ account (available only for initial requests submitted via the portal account), or
- **email** to sg-acc-doc@ec.europa.eu, or
- **letter post** to the following address:
  European Commission
  Secretariat-General
  ‘Transparency, Document Management & Access to Documents’ (unit SG C.1)
  BERL 7/76
  Rue de la Loi 200/Wetstraat 200
  1049 Brussels.

Yours sincerely,

[Signature]

Sabine WEYAND
p.o Leopoldo RUBINACCI

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¹¹ https://www.ec.europa.eu/transparency/documents-request