Subject: Your application for access to documents – Ref GestDem No 2015-6233

Dear Mr Cancela,

I refer to your request for access to documents under Regulation (EC) No 1049/2001 ("Regulation 1049/2001"), received on 26 November and registered on 30 November 2015 under the above mentioned reference number.

I would like to apologise for the time it has taken to reply to your request. The Directorate-General for Trade is currently processing a large number of requests for access to documents while at the same time pursuing a busy trade agenda. Although we make our best effort to reply to applicants within the deadline of Regulation 1049/2001, a delay in these circumstances has unfortunately been unavoidable. Moreover, in the case of your request the delay has been due also to the fact that one of the documents concerned originates from a third party that had to be consulted on the disclosure, in accordance with Article 4(4) of Regulation 1049/2001.

1. **Scope of your request**

You requested access to the following documents:

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• “a list of meetings between DG Trade officials and representatives of ExxonMobil and oil industry (including oil companies and oil industry groups, but also lobby consultancies, law firms and others working for tobacco industry clients or otherwise representing the tobacco industry) in the period between January 1st 2015 and today;

• minutes and other reports of these meetings;

• all correspondence (including emails) between DG Trade officials and representatives of the oil industry (including oil companies and oil industry groups, but also lobby consultancies, law firms and others working for oil industry clients or otherwise representing the tobacco industry) between January 1st 2015 and today”.

In a follow-up e-mail of 29 November 2015, you clarified that the reference to the "tobacco industry" in your request was due to an oversight.

On the basis of your request we have identified the following documents:

• the report dated 5 March 2015 of a meeting with Chevron on 4 March 2015 (Ares(2015)5969847) ("document 1");

• the report of a meeting with Dow Chemical Company on 19 May 2015, and an annex containing names and other personal data of company employees attending the meeting (Ares(2015)5382829) ("document 2");


Furthermore, we have established under the Code of Good Administrative Behaviour,\(^2\) a list of the relevant meetings, enclosed in Annex I. That list also provides for each of the meeting reports identified above, a description (e.g. date, company/association concerned) and indicates whether parts are withheld and if so, under which ground pursuant to Regulation 1049/2001. Copies of the accessible documents are enclosed in Annex II.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law,\(^3\) 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


\(^3\) Judgment in Sweden and Maurizio Turco v Council, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.
by that exception; second, it must examine whether disclosure of the parts of the document in question pose a "reasonably foreseeable and not purely hypothetical" risk of undermining the protection of the interest covered by the exception.\(^4\)

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents,\(^5\) "the exceptions to that right […] must be interpreted and applied strictly".\(^6\)

Having carefully examined documents 1-3 in light of the applicable legal framework, I am pleased to inform you that they can be partially disclosed. Names of individuals have been redacted in all three documents, pursuant to Article 4.1(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001 ("Regulation 45/2001"),\(^7\) except for names of members of Cabinet and of senior management of the Commission (Director level and above). In addition, as regards document 3, other information has been redacted as it is covered by the exception set out in Article 4.1(a) third indent.\(^8\) The reasons justifying the application of the abovementioned exceptions are set out below.

### 2.1. Protection of international relations

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."

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".\(^9\)

The General Court has stated that "it is possible that the disclosure of European Union positions in international negotiations could damage the protection of the public interest as regards international relations" and "have a negative effect on the negotiating position of the European Union."\(^10\) Moreover, it found that "public participation in the procedure relating to the negotiation and the conclusion of an international agreement is necessarily restricted, in view of the legitimate interest in not revealing strategic elements of the negotiations".\(^11\)

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\(^4\) See also Judgment in Council v Sophie in 't Veld, C-350/12 P, EU:C:2014:2039, paragraphs 52 and 64.


\(^8\) Some parts of documents 1, 2 and 3 have been considered to fall outside the scope of your request as they concern internal communication on administrative matters which are unrelated to the subject matter of your request.


Document 3 is the report of a meeting between DG Trade and representatives of ConocoPhilips. One sentence has been removed from the report as it reveals the assessment of a member of the EU staff on a possible solution to the US export ban on crude oil. The release of this position could weaken the negotiating position of the EU and reduce its margin of manoeuvre in the ongoing TTIP negotiations, thus posing a "reasonably foreseeable and not purely hypothetical" risk of undermining the outcome and objectives of the negotiations and ultimately the protection of the public interest as regards international relations.

2.2. Protection of privacy and integrity of the individual

Article 4.1 (b) of Regulation 1049/2001 provides that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data."

The Court of Justice has ruled that "where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data" "the provisions of Regulation 45/2001, of which Articles 8(b) and 18 constitute essential provisions, become applicable in their entirety".12

Article 2(a) of Regulation 45/2001 provides that "'personal data' shall mean any information relating to an identified or identifiable natural person [...]". The Court of Justice has confirmed that "there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'"13 and that "surnames and forenames may be regarded as personal data",14 including names of the staff of the institutions.15

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish "the necessity of having the data transferred" and additionally "if there is no reason to assume that the legitimate interests of the data subjects might be prejudiced". The Court of Justice has clarified that "it is for the person applying for access to establish the necessity of transferring that data".16

Documents 1, 2 and 3, all contain generally names and other personal information that may allow the identification of natural persons. In addition, document 2 contains a list of company employees attending the meetings, including their names, job titles, nationality, and passport information.

13 Judgment in Rechnungshof v Rundfunk and Others, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.
16 Id., paragraph 107; see also judgment in C-28/08 P Commission v Bavarian Lager, EU:C:2010:378, paragraph 77.
I note that you have not established the necessity of having these personal data transferred to you. Moreover, it cannot be assumed, on the basis of the information available, that disclosure of such personal data would not prejudice the legitimate interests of the persons concerned. Therefore, these personal data shall remain undisclosed in order to ensure the protection of the privacy and integrity of the individuals concerned.

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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:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles

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

Yours sincerely,

Jean-Luc DEMARTY

Encl.:
Annex 1 – list of relevant meetings and documents
Annex 2 - documents (partially) disclosed