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Directorate-General for Trade
Directorate A - Resources, Information and Policy Coordination
Transparency and Evaluation
The Head of Unit

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***By registered letter with acknowledgment
of receipt***

Lora Verheecke
Corporate Europe Observatory
26 Rue d'Edimbourg
1050 Brussels
Belgium

Advance copy by email:

ask+request-4733-cc2b3e25@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2017/6161

Dear Ms Verheecke,

I refer to your email of 26 October 2017 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.

You request access to *"all communication, including emails, and documents (agenda, minutes, list of participants, etc) related to the meeting between Christian Burgsmueller, Maria Asenius and American Chamber of Commerce to the European Union (AmCham EU) on 17th October 2017"*.

We have identified the following documents that fall under the scope of your request:

- An email inviting Commissioner Malmström to participate in an event of AmCham EU on 17 October 2017, which includes a letter from the CEO of AmCham EU in attachment ("**document 1**") (Ares(2017)3905930);
- A chain of emails between the Cabinet of Commissioner Malmström and AmCham EU which includes a response to the invitation and the arrangements for the participation of Maria Åsenius and Christian Burgsmueller to the event ("**document 2**") (Ares2017 5715221);

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, OJ L 145, 31.5.2001, p. 43.

- An email from AmCham EU that includes in attachment a letter from the CEO of AmCham EU ("**document 3**") (Ares(2017)5261816).

Please note that as this was a public event, no internal report was drafted. However, you can find more information on this event on the website of AmCham EU,² including information on the intervention of Ms Asenius and a list of speakers.

I am glad to inform you that access can be granted to the content of the identified documents. However, some personal data have been withheld in accordance with Article 4(1)(b) of Regulation 1049/2001. The legal reasoning underlying the protection of these personal data is provided below.

In line with the Commission's commitment to ensure transparency and accountability³, the names of the members of Cabinet (not occupying administrative positions) are disclosed. For AmCham EU, the names of the CEO and the Acting Policy Director are also disclosed. Copies of the accessible documents are enclosed.

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 applicable legislation in this field is 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 data⁴.

Article 2(a) of Regulation 45/2001 provides that "*'personal data' shall mean any information relating to an identified or identifiable natural person [...]*". In this respect, the jurisprudence of the EU Courts has clarified that activities of a professional nature may fall within the notion of '*private life*'⁵ and that "*surnames and forenames may be regarded as personal data*"⁶, including names of the staff of the institutions⁷.

² <http://www.amchameu.eu/news/new-era-eu-trade-policy-constructive-dialogue>

³ See Commission decisions C(2014) 9051 and C(2014) 9048 of 25 November 2014.

⁴ OJ L 8, 12.1.2001, p. 1. 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*" (see judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 101; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraphs 63 and 64).

⁵ 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.

⁶ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

⁷ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

In accordance with Article 8(b) of Regulation 45/2001 personal data may 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*"⁸. I consider on the basis of your application, that these conditions have not been met. Therefore, in order to ensure the protection of the privacy and integrity of the individuals concerned, the personal data in question cannot be transferred.

In case you would disagree with the assessment provided above, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, 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 5/282
B-1049 Bruxelles

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

Yours sincerely,

[e-signed]

Delphine Sallard

⁸ The Court of Justice has clarified that "*it is for the person applying for access to establish the necessity of transferring that data*" (C-127/13 P, paragraph 107; see also judgment in C-28/08 P *Commission v Bavarian Lager*, EU:C:2010:378, paragraph 77).