



EUROPEAN COMMISSION
Directorate-General for Trade

The Director General

Brussels,
G3/FPC/MHO/svm/ARES(2018)212180

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

Katyayeni Mehta
Willow House
72-74 Paul Street
London
EC2A 4NA
United Kingdom

Subject: Your request for access to documents – Ref GestDem 2017/7420

Dear Ms Mehta,

I refer to your application dated 12 December 2017 in which you make a request for access to documents under Regulation No 1049/2001¹ ("Regulation 1049/2001), registered on 13 December 2017 under the above mentioned reference number.

Please accept our apologies for the delay in answering to your request, which is mainly due to a high number of requests for access to documents being processed at the same time by DG TRADE.

1. SCOPE OF YOUR REQUEST

You requested access to the following documents from DG Trade:

- *The full participant list for the Market Access Advisory Committee of 17 November 2016, minutes of which the Commission has previously released:*
(MAAC 2016-048) <https://www.asktheeu.org/en/request/4068...>
- *all other documents related to this meeting.*

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.

We have identified 3 documents which fall under the scope of your request. A list of the documents is enclosed in Annex 1. For each of the documents the list provides a description and indicates whether parts are withheld and if so, under which ground pursuant to Regulation 1049/2001.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law², 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 pose 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 Articles 4.2 and 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 documents⁴, “*the exceptions to that right [...] must be interpreted and applied strictly*”⁵.

Having examined the requested documents under the applicable legal framework, I am pleased to grant partial access to all the documents.

In documents 1 and 2, only personal data have been redacted, pursuant to article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001 (“Regulation 45/2001”)⁶.

In document 3, some parts are covered by the exception set out in Article 4(1)(a) third (protection of the public interest as regards international relations).

The reasons justifying the application of the exceptions are set out below in Sections 2.1 and 2.2. Copies of the accessible documents are enclosed.

² 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.

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 and 64.

⁴ Regulation (EC) No 1049/2001, recital (4).

⁵ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

⁶ Regulation (EC) No 45/2001 of the European Parliament and the 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, OJ L 8, 12.1.2001, p. 1.

2.1 Protection of the public interest as regards 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.”

According to settled case-law, *"the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 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"*⁷. 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"*⁸.

Document 3, and more concretely the *next steps* column, contains internal assessments regarding actions, initiatives and objectives that the EU planned to pursue *vis-à-vis* India in relation to market access issues. Public disclosure of this information would undermine in a reasonably foreseeable manner the international relations of the EU with India by giving out specific elements of its tactical and strategic approaches, interests, objectives and internal considerations. Disclosure of this information would weaken the position of the EU in its commercial relations with India. This may ultimately undermine the goals and objectives that the EU may want to achieve in its commercial relations with India and consequently, 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"*⁹.

⁷ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36

⁸ Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

⁹ 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.

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'*"¹⁰ and that "*surnames and forenames may be regarded as personal data*"¹¹, including names of the staff of the institutions¹².

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*"¹³.

Documents 1 and 2 contain personal information, such as names, e-mail address and telephone number that allow the identification of natural persons.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested without including these personal data.

You may reuse the information disclosed in documents 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 document. Please note that the Commission does not assume liability stemming from any reuse.

In case you would disagree with my assessment, 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:

¹⁰ 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.

¹¹ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

¹² Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

¹³ *Id.*, paragraph 107; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 77.

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,

A handwritten signature in black ink, consisting of a stylized 'J' and 'L' followed by a long horizontal stroke that ends in an arrowhead pointing to the right.

Jean-Luc DEMARTY

Encl.:

List of documents

Partially released documents