



EUROPEAN COMMISSION  
Directorate-General for Trade

The Director General

Brussels, 26/03/2018

*By registered letter with acknowledgment of receipt*

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**Subject: Your application for access to documents – Ref. GestDem No 2017/7545**

Dear Ms Hodgetts,

I refer to your application of 19 December 2017 in which you make a request for access to documents in accordance with Regulation (EC) No 1049/2001<sup>1</sup> ("Regulation 1049/2001").

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 indicate that you would like to receive access to "*documents (such as agendas, Commission briefing papers and minutes) that relate to meetings as well as correspondence (such as emails, letters, faxes) between Commissioner Cecilia Malmstrom, Members of her cabinet, DG Trade members of staff, and the following: Sime Darby; Indonesian Palm Oil Association; Malaysian Palm Oil Council; European Palm Oil Alliance; Hill & Knowlton International Belgium; Kreab; Golden Agri-resource Ltd; Cargill; Wilmar International Limited; Sinar Mas Group; Unilever, concerning: Commission response to resolution 2016/2222 and EU-Indonesian free trade negotiations for CEPA, since January 1st, 2016.*"

<sup>1</sup> 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.

In DG TRADE, we have identified 8 documents which are listed for ease of reference in Annex I. For each of them, 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 law<sup>2</sup>, 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*”<sup>3</sup>.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents<sup>4</sup>, “*the exceptions to that right [...] must be interpreted and applied strictly*”<sup>5</sup>.

Having examined the requested documents under the applicable legal framework, partial access is provided for all the identified documents. Copies of the documents are enclosed.

I am pleased to inform you that full access is granted to the annex to document 5 and 7 respectively (same document). In documents 1 to 7 personal data have been redacted, pursuant to Article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001<sup>6</sup> (“Regulation 45/2001”).

In document 1, in addition to personal data protected under article 4(1)(b) of Regulation 1049/2001, additional information was redacted in accordance with article 4(1)(a) third indent (protection of the public interest as regards international relations).

Please also note that part of document 3 is out of the scope of your request and has been redacted and clearly marked accordingly.

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<sup>2</sup> 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.

<sup>3</sup> *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.

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

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

<sup>6</sup> 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.

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

## 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”*<sup>7</sup>. 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”*<sup>8</sup>.

Some passages in document 1 contain information provided by and exchanged between the EU and a third party. This information represents comments, expectations and political confidential insight. There is a reasonably foreseeable and not purely hypothetical risk that its public disclosure would undermine and create irritations in the relations between the EU and Indonesia, and therefore, undermine the public interest as regards the international relations of the EU.

More generally, releasing this information could also weaken the position of the EU and its Member States vis-à-vis other third countries as other third countries may draw conclusions regarding their own relations with the EU that are not fully accurate. This could even allow them to extract specific concessions from the EU in the context of ongoing negotiations, thus to the disadvantage of the EU’s international relations, and the interests of its citizens, consumers and economic operators.

Indeed, the success of trade negotiations depends to a large extent on the protection of objectives, tactics and fall-back positions of the parties involved. In order to ensure the best possible outcome in the public interest, the EU needs to retain a certain margin of manoeuvre to shape and adjust its tactics, options and positions in function of how the discussions evolve in its trade negotiations. This also applies at the stage when negotiations are practically concluded and both sides are aiming to complete the necessary ratification procedures.

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

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



Therefore, in order to protect the public interest of the EU as regards its international relations, document 1 is disclosed without the information contained in its last paragraph.

## 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 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 data. In this respect, 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"<sup>9</sup>.

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'"<sup>10</sup> and that "surnames and forenames may be regarded as personal data"<sup>11</sup>, including names of the staff of the institutions<sup>12</sup>.

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"<sup>13</sup>.

Documents 1 to 7 contain names and other personal information that allows the identification of natural persons.

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

<sup>9</sup> 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.

<sup>10</sup> 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.

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

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

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

individuals concerned and the requested documents are disclosed without including these personal data.

However, in line with the Commission's commitment to ensure transparency and accountability, the names of Members of Cabinet and of the senior management of the Commission (at Director level and above) are disclosed. For Unilever and Sinarmas, the names of their main representatives are also disclosed.

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In case you would disagree with the assessment provided in this reply, 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  
1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Jean-Luc DEMARTY

Encl.: - List of documents;

- Released documents.