



**EUROPEAN COMMISSION**  
Directorate General Internal Market and Services

Director General

Brussels, **31 07 2013**  
MARKT/B4/JPZ/alf(2013) 2870911

Mr Jan-Jitze HEES  
ask+request-502-5f133990@asktheeu.org

**Subject: Your application for access to documents – Ref GestDem No 2013/3168**

**Ref.:** Our letter Ares (2013)2581986, sent on 5<sup>th</sup> July 2013

Dear Mr Hees,

We refer to your e-mail dated 13/05/2013, addressed to the European External Action Service (EEAS), in which you make a request for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, registered on 12/06/2013 under the above mentioned reference number, and to our subsequent letter sent on 5<sup>th</sup> July.

As indicated in our previous letter, among the dialogues to which you refer, your application concerns documents related to the EU-China Economic and Financial Dialogue, which is jointly organised by two Commission departments (DG Economic and Financial Affairs and DG Internal Market and Services). The request involves two categories of documents: the Memorandum of Understanding setting up the dialogue and the draft agendas of the 7 dialogues held since 2006 to date.

We have examined the requested documents under the provisions of Regulation No 1049/2001. The documents concern political dialogues between the EU and a third country which are based on the principle of confidentiality. All these documents form part of a single category of documents falling within the scope of the exception laid down in the third indent of Article 4(1)(a) of Regulation No 1049/2001. Their disclosure could negatively affect either the possibility of holding such dialogues in the future and/or their substance, should the level of trust between interlocutors on both sides be weakened as a result. Running dialogues with third countries require passing Memoranda of Understanding and agreeing on draft agendas for each of the meetings. Such documents fall within the domain of the executive. Public participation in the procedure relating to the organisation of a dialogue with a third country is necessarily restricted, in view of the legitimate interest in not revealing strategic elements of the relations with such country (see Case T529/09 in 't Veld v Council [2012] ECR II-0000, paragraph 88). Any disclosure of the documents concerned would undermine the protection of international relations.

In these circumstances, I regret to inform you that we cannot grant you access to the documents, as they come under the exception provided for in Article 4(1)(a) third indent of Regulation No 1049/2001 which stipulates that access to a document shall be refused where disclosure would undermine the protection of international relations.

In examining your request, the possibility of granting partial access to the requested documents has been taken into consideration. However, for the reasons indicated above, all the documents are covered by the exception referred to in Article 4(1) of Regulation No. 1049/2001. Therefore, partial access to the documents cannot be granted since, even if parts of the document would be expunged, the remaining elements could lead to a disclosure of the positions of the other parties in the dialogue. One should stress that establishing and protecting a sphere of mutual trust in the context of international dialogues is a very delicate exercise. Disclosure by one of the parties of the position of other parties, even if this appears partial at first sight, may be likely to seriously undermine, for the negotiating party whose position is made public, the mutual trust essential to the effectiveness of those dialogues.

In accordance with Article 7(2) of Regulation No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

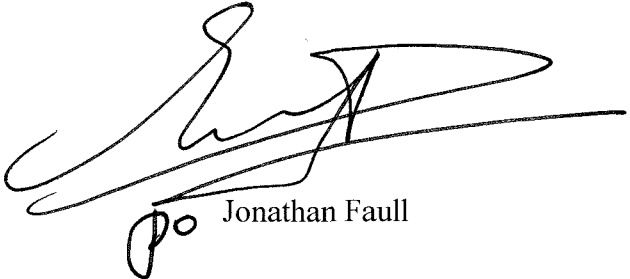
Such a confirmatory application should be addressed to the Secretary-General of the Commission, within 15 working days from receipt of this letter. Should you seek a review, the Secretary-General will inform you of the results of this review within 15 working days from the registration of your request, either granting you access to the documents or confirming the refusal. In the latter case, you will be informed of how further action can be taken.

All correspondence should be sent to the following address:

European Commission  
Secretary-General  
Unit SG/B/5, Transparency  
BERL 05/327  
B-1049 Brussels

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

Yours sincerely,



Jonathan Faull

Contact:

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c.c.: Mr. BERTOLDI, Mr. DE LUZENBERGER, Mr WILLIS (ECFIN/D3); Ms FABRIZI, Ms DRULHE, Mr ONESTINI, Mr HEUZÉ (EEAS); Ms BLURIOT-PUEBLA (SG/F5); Mr BOULOUQUE (MARKT)