



EUROPEAN COMMISSION
Neighbourhood and Enlargement negotiations

The Director-General

Brussels, 07/11/2018

By registered letter

Subject: Your application for access to documents – Ref GestDem No 2018/5395

Dear Mr Teffer,

I refer to your application dated 12 October 2018, registered on the same date¹, under the reference number GestDem 2018/5395, in which you make a request for access to "*all documents - including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations - related to the 1/10/2018 meeting between Kyriacos Charalambous and British American Tobacco*".

E-mail exchanges between a Member of Cabinet Hahn and EU officials working for the Directorate General for Neighborhood and Enlargement Negotiations (DG NEAR) and between a Member of Cabinet Hahn and representatives of the British American Tobacco have been identified as falling under the description provided in your application.

Following an examination of these documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents², I am in the position to grant full access to three e-mails and partial access to one e-mail, as full disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(a) third indent (protection of the public interest as regards international relations) and Article 4(3) second indent (document containing opinions for internal use and part of deliberations and preliminary consultations within the institution).

¹ Ref. Ares(2018)5254558

² Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, Official Journal L 145 of 31 May 2001, p. 43.

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1. Protection of the public interest as regards international relations

Article 4(1)(a) third indent of Regulation (EC) No 1049/2001 provides that “*The institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations*”.

With regard to Article 4(1)(a) of Regulation (EC) No 1049/2001, the Court of Justice has acknowledged in Case C-350/12 P³ that the institutions enjoy “*a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions could undermine the public interest.*”

The information which is withheld reflects the EU staff's views or concerns, expressed for internal use, on the draft legislation in Kosovo*⁴ which might not be in accordance with the Stabilisation and Association Agreement signed between the European Union and Kosovo*. Public release of these comments would reveal- even indirectly- the European Union's positions on the matter, expressed both in bilateral negotiations with the authorities of Kosovo* as well as in a broader international context. It should be noted in that regard that, in the context of international negotiations, the positions taken by the European Union (in this case by an EU institution) are, by definition, subject to change depending on the course of those negotiations and on concessions and compromises made in that context by the various stakeholders⁵. The formulation of negotiating positions may involve tactical considerations of the stakeholders and disclosure by the European Commission of its own preliminary views and negotiating positions could undermine its overall negotiating position.

Furthermore, should third countries know that by analogy to the potential disclosure of Commission positions, their own negotiating positions could be also disclosed to the public, this would undermine their willingness to provide meaningful feedback on the legislative developments in their countries and would expose future consultations to undue external pressure. This carries indeed a real and non-hypothetical risk that the authorities of Kosovo* would be less open to discussing these matters in future communications, which would slow down the pre-accession process and complicate the negotiations.

Therefore, full disclosure of this document would undermine the protection of the public interest as regards international relations protected by Article 4(1)(a) third indent of Regulation 1049/2001, and access to this specific information has to be refused on that basis.

2. Protection of the decision-making process

³ Judgment of the Court of Justice of 3 July 2014, *Council v in 't Veld*, Case C-350/12 P, paragraph 63.

⁴ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

⁵ Judgment of the Court of Justice of 3 July 2014, *Council v in 't Veld*, Case C-350/12 P, paragraph 125.

Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001 provides that *“Access to a document, containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision making process, unless there is an overriding public interest in disclosure”*.

The information to which access is refused contains arguments intended for internal use only. They were forwarded by staff members of DG NEAR to a Member of Cabinet Hahn as part of the preliminary internal consultations concerning the compliance of the draft tobacco Kosovar legislation with the provisions of the Stabilisation and Association Agreement.

The disclosure of this information relates to issues in which no final decision has been taken, and requires protection under the exception quoted above, as its public disclosure would provide detailed insight into the ongoing internal Commission discussions on the draft legislation.

If staff members would learn that their preliminary views on topical matters are disclosed, this would erode the required climate of trust and confidence. Consequently, there would be a real and non-hypothetical risk of self-censorship on the part of the EU staff members who qualitatively assess information at their disposal and provide their input to the Cabinet members in order to shape their views and positions in the relevant deliberations with public and private stakeholders.

3. No overriding public interest in disclosure

Pursuant to Article 4(3) of Regulation (EC) No 1049/2001, the exceptions to the right of access defined therein must be waived if there is an overriding public interest in disclosing the documents requested. In order for an overriding public interest in disclosure to exist, this interest first has to be public and, secondly, overriding, i.e. in this case it must outweigh the decision-making process protected under Article 4(3) of Regulation (EC) No 1049/2001.

In your request, you do not put forward any arguments demonstrating the existence of an overriding public interest in disclosure. Similarly, the Commission has not identified any public interest that would override the interests protected by Article 4 (3) of Regulation (EC) No 1049/2001.

4. Means of Redress

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review its 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-C-1
BERL 5/327
B-1049 Bruxelles

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

Yours sincerely,

(e-signed)
Christian Danielsson

Encl: 1 document (sent by e-mail only)