



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate C - Transparency, Efficiency & Resources
The Director

Brussels,
SG.C.1/AF -

By registered mail with AR

Mr Peter Teffer
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Belgium

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14c78f33@asktheeu.org

Subject: Your application for access to documents – GESTDEM 2019/1386

Dear Mr Teffer,

We refer to your e-mail of 11 March 2019 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number.

You request 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 all meetings between first vice-president Frans Timmermans and BusinessEurope in 2018 and 2019
- 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 06/11/2018 meeting between first vice-president Frans Timmermans and the Tony Blair Institute for Global Change (TBI)
- 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 30/10/2018 meeting between first vice-president Frans Timmermans and PA Europe

- 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 26/10/2018 meeting between first vice-president Frans Timmermans and several companies (Discussion about Plastics Strategy, Circular economy)
- 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 25/10/2018 meeting between first vice-president Frans Timmermans and Apple'.

The European Commission has identified the following documents as falling within the scope of your request:

As regards 'Business Europe':

- Invitation of 7 February 2018, reference Ares(2018)743156 (hereafter 'document 1');
- Answer to the invitation of 7 February 2018, reference Ares(2018)2832404 (hereafter 'document 2');
- Invitation of 25 April 2018, reference Ares(2018)2227702 (hereafter 'document 3');
- Answer to the invitation of 25 April 2018, reference Ares(2018)2253592 (hereafter 'document 4');
- Invitation of 11 October 2018, reference Ares(2018)5237321 (hereafter 'document 5');
- Answer to the invitation of 11 October 2018, reference Ares(2018)5631967 (hereafter 'document 6');
- Invitation of 2 October and follow-up, Ares(2018)5633573 (hereafter 'document 7');
- Invitation of 7 December 2018, reference Ares(2018)6618471 (hereafter 'document 8');
- Invitation of 11 December 2018 and attached annexes, reference Ares(2018)6463868 (hereafter 'document 9').

As regards 'PA Europe':

- Email exchanges of October 2018, reference Ares(2019)2373076 (hereafter 'document 10).

As regards the part of your request relating to '[d]iscussion about Plastics Strategy, Circular economy':

- Invitation from DSM of 2 May 2018 to attend the Chemical Convention in Amsterdam on 25 and 26 October 2018, reference Ares(2018)2329186 (hereafter 'document 11');
- Answer to DSM's invitation of 2 May 2018, reference Ares(2018)2557512 (hereafter 'document 12').

- Invitation from SABIC of 11 September 2018, reference Ares(2018)4686996 (hereafter ‘document 13’);
- Invitation from Nouryon of 12 October 2018 and attachments, reference Ares(2018)5290165 (hereafter ‘document 14’);
- Thank you letter from CEFIC for attending the Chemical Convention in Amsterdam of 31 October 2018, reference Ares(2018)5717806 (hereafter ‘document 15’).

As regards ‘Apple’:

- Invitation for a meeting with Tim Cook of 21 September 2018, reference Ares(2018)4856712 (hereafter ‘document 16’);
- Answer to the invitation for a meeting of 21 September 2018, reference Ares(2018)4893068 (hereafter ‘document 17’);
- Further email exchanges of October 2018, reference Ares(2018)5117958 (hereafter ‘document 18’);
- Invitation to a dinner in honor of Apple’s CEO Tim Cook of 27 September 2018, reference Ares(2018)4987367 (hereafter ‘document 19’);
- Answer to the invitation of 27 September 2018, reference Ares(2018)5108010 (hereafter ‘document 20’).

1. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

Following our assessment, I hereby inform you that wide partial access is granted to all the documents, with the exception of document 13, subject only to the redactions of personal data, in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, for the reasons set out below.

Access to the redacted parts of document 13 must also be refused based on the exception protecting the commercial interests provided for in Article 4(2) first indent of Regulation (EC) No 1049/2001.

As regards the part of your request relating 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 06/11/2018 meeting between first vice-president Frans Timmermans and the Tony Blair Institute for Global Change (TBI)’, we regret to inform you that the European Commission does not hold any documents that would correspond to the description given in your application.

1.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 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 (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (hereafter ‘Regulation (EU) 2018/1725’).¹

In its judgment in Case C-28/08 P (*Bavarian Lager*)², the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 2018/1725. However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.³

Please note that the documents, to which you request access, contain the names, surnames, contact details (email addresses, telephone and office numbers) and professional activities of people who are not considered as public figures, and of staff members of the European Commission not holding any senior management positions. They contain also biometric data, which is redacted by default. The names, surnames and contact details of the persons concerned as well as other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Please note that according to our established administrative practice, the names of people holding senior management positions in the European Commission such as Cabinet members, of public figures and of the main representatives of organisations/companies, are in principle disclosed.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

¹ Official Journal L 205 of 21.11.2018, p. 39.

² Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, Case C-28/08 P, EU:C:2010:378, paragraph 59.

³ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.⁴ This is also clear from Article 9(1) (b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the withheld personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data in question.

2.2 Protection of commercial interests of a natural or legal person

Article 4(2), first indent, of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, [...] unless there is an overriding public interest in disclosure'.

⁴ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

Document 13 consists of the electronic correspondence exchanged between members of the Cabinet of the First Vice-President of the European Commission and a staff member of SABIC. This correspondence contains practical arrangements to organise a future meeting between the First Vice-President and SABIC's CEO, but also reveals details regarding the topics that would be discussed if such a meeting takes place.

This information reveals details about SABIC's strategy and future plans for the development of the company.

Therefore, public disclosure of the redacted parts of the above-mentioned document would allow revealing strategic choices of SABIC for the future. That in turn, would undermine the competitive position of the economic operator in question, as its competitors would receive an insight into the company's future strategy.

Consequently, there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the commercial interests of the economic operator in question. I conclude, therefore, that access to the undisclosed parts of document 13 must be denied on the basis of the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

2. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

However, you do not refer in your application to any particular public interest that would warrant public disclosure of the relevant redacted parts of document 13.

Nor have I, based on my own analysis, been able to identify any elements capable of demonstrating the existence of a public interest that would override the need to protect the commercial interests of the economic operator grounded in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

3. PARTIAL ACCESS

Please note that partial access is granted to the documents, including to document 13.

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 European Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Tatjana VERRIER

Enclosures: (20)