Subject: Your application for access to documents – Ref GestDem 2019/3100

Dear Mr Roux,

I refer to your application dated 28/05/2019, in which you make a request for access to documents under Regulation (EC) No 1049/2001, registered on the same date under the above mentioned reference number.

1. SCOPE OF YOUR REQUEST

In your request, you asked for access to the following:

"Any minutes, correspondence (including emails), list of participants and other reports of the meetings of the trade counsellors in Washington in May 2019, as part of the EU-US trade negotiations."

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law, 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

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takes the view that disclosure would undermine the protection of any of the interests defined under Article 4(2) 3 and Article 4(3) of Regulation 1049/2001, the institution is required "to ascertain whether there is any overriding public interest justifying disclosure". In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents, "the exceptions to that right [...] must be interpreted and applied strictly".

In relation to your request, we have identified 1 document – the agenda for EU Trade Counsellors meeting on 20 May 2019. We are glad to inform you that the access has been granted to the above mentioned document except for some parts containing personal data that has been redacted pursuant to Article 4.1(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 2018/1725. Additionally, the parts not related to the matter of the EU-US trade negotiations thus falling outside the scope of this request have been redacted as out of scope.

2.1 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 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 (‘Regulation 2018/1725’).

All the documents partially released contain personal information, such as names, e-mail addresses, telephone numbers that allow the identification of natural persons, as well as other personal information like signatures.

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data "means any information relating to an identified or identifiable natural person [...]". The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data. Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.

In its judgment in Case C-28/08 P (Bavarian Lager), 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

Pursuant to Article 9(1)(b) of Regulation 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". Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established 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 application, 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, we do not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above reply, let me inform you that on 25 July 2019, the Commission has published a report on the implementation of the EU-US Joint Statement of 25 July 2018 (http://trade.ec.europa.eu/doclib/press/index.cfm?id=2052). You might find the content of this report interesting.

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In accordance with Article 7(2) of Regulation 1049/2001, you are entitled 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, Document Management & Access to Documents-SG-C1
BERL 7/076
BE - 1049 Bruxelles

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

Yours sincerely,

Sabine WEYAND

Enclosures: Disclosed document