Subject: Your application for access to documents – GESTDEM 2019/6002

Dear Ms Down,

I refer to your message of 16 October 2019 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number.

1. SCOPE OF YOUR REQUEST

You request access to, I quote:

‘- 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 the Secretariat and representatives of trade associations, unions, and think tanks on the subject of EFSI in 2014 and 2015’.

On 17 October 2019, the European Commission sent you a clarification request, whereby it informed you that the description given in your application does not enable it to identify concrete documents which would correspond to your request. Therefore, it invited you to specify your request by providing more detailed information on the documents which you seek to obtain, more particularly the topic(s) of the requested document, references, date of the requested documents, persons or bodies who drafted the documents, etc.
By your email of 22 October 2019, you replied to the clarification request by providing additional information on your request including on the names of persons and organisations or entities, to the meetings of which your request for access to documents pertains. However, the clarifications received were not sufficiently precise to enable the Commission to identify the documents to which you request to obtain access.

On 23 October 2019, the Commission sent you a further clarification request, common for all three initial requests you submitted to the Secretariat-General. It also provided you with the lists of all meetings held between the organisations/entities mentioned in your requests available in the Transparency Register.

As regards the present request, registered under the reference number GESTDEM 2019-6002, the Commission asked if you could confirm that you are interested in obtaining access to all documents in relation to all meetings held between the President Jean-Claude Juncker and his cabinet members and the First Vice-President Frans Timmermans and his cabinet members, for the period 2014 and 2015, and the following organisations/entities: European Trade Union Confederation, European Round Table of Industrialists, FEDIL-The Voice of Luxembourg’s Industry and the American Chamber of Commerce to the European Union.

By your email of 25 October 2019, you confirmed that you are interested in obtaining access to:

‘[a]ll documents in relation to all meetings held between the President Jean-Claude Juncker and his cabinet members and the First Vice-President Frans Timmermans and his cabinet members, for the period 2014 and 2015, and the following organisations / entities: European Trade Union Confederation, European Round Table of Industrialists, FEDIL-The Voice of Luxembourg’s Industry and the American Chamber of Commerce to the European Union.’

Based on the above, the Commission has identified the following documents as falling within the scope of your request GESTDEM 2019-6002:

As regards the documents in relation to all meetings held between the First Vice-President of the Commission and his cabinet members, and the above-mentioned organisations / entities, for the period 2014 and 2015:

- E-mail enclosing a letter from the European Trade Union Confederation (hereafter ‘ETUC’) to the First Vice-President of 4 November 2014, reference Ares(2014)3663561 (hereafter ‘document 1’ and ‘document 1a’);

---

1 Registered under the reference numbers GESTDEM 2019/5823, GESTDEM 2019/5865 and GESTDEM 2019/6002.
- E-mail enclosing a letter from European social partner organisations to the First Vice-President and Vice-President Valdis Dombrovskis of 24 April 2015, reference Ares(2015)1780921 (hereafter ‘document 2’ and ‘document 2a’);

- Letter to the European social partners from the First Vice-President and Vice-President Valdis Dombrovskis of 6 May 2015, reference Ares(2015)1922812 (hereafter ‘document 3’);


- E-mails from the European Round Table of Industrialists (hereafter ‘ERT’) to the Cabinet of the First Vice-President of April 2015 and June 2015 enclosing the document entitled ‘Competitiveness Working Group membership’, reference Ares(2015)32648 (hereafter ‘document 5’ and ‘document 5a’);

- E-mail of 9 February 2015 enclosing a letter from the American Chamber of Commerce to the EU to the Cabinet of the First Vice-President of 6 February 2015 and the document entitled ‘AmCham EU’s response to the European Commission’s public consultation on modalities for investment protection and ISDS in TTIP’, reference Ares(2015)584317 (hereafter ‘document 6’, ‘document 6a’ and ‘document 6b’).

As regards the documents in relation to all meetings held between the President of the Commission and his cabinet members, and the above-mentioned organisations / entities, for the period 2014 and 2015:

- E-mail enclosing a letter of invitation from the ETUC to the President of the Commission to attend the ETUC Executive Committee on trade unions’ assessment of the European Commission Work Programme 2016 of 27 November 2015, reference Ares(2015)5425591 (hereafter ‘document 7’ and ‘document 7a’);


- E-mail enclosing letter from the ETUC to the President of the Commission and to a Member of the Commission of 2 October 2015 regarding the preparatory meeting ahead of the Tripartite Social Summit, reference Ares(2015)4097360 (hereafter ‘document 11’ and ‘document 11a’);
Letter of reply from the President of the Commission to the ETUC of 5 November 2015, reference Ares(2015)4855679 (hereafter ‘document 12’);

E-mail enclosing a letter of invitation from the ETUC to the President of the Commission to attend the 13th ETUC Congress of 23 February 2015, reference Ares(2015)764316 (hereafter ‘document 13’ and ‘document 13a’);


E-mail exchange regarding the proposal for a meeting between the Office of the President of the Commission and the ETUC of December 2014, reference Ares(2014)4306282 (hereafter ‘document 15’) and Ares(2015)713210 (hereafter ‘document 16’);

E-mail from the ETUC to the President of the Commission regarding the proposal for a meeting of 27 November 2014, reference Ares(2014)3986785 (hereafter ‘document 17’);

E-mail exchange regarding a meeting request between the Office of the President of the Commission and the ERT of February 2015, reference Ares(2015)532724 (hereafter ‘document 18’);

E-mail from the Office of the President of the Commission to the ERT of 17 November 2014, reference Ares(2014)3813303 (hereafter ‘document 19’);

Letter from the ERT to the President of the Commission of 28 October 2014, reference Ares(2014)3660140 (hereafter ‘document 20’);

E-mail exchange regarding an invitation from FEDIL – The Voice of Luxembourg’s Industry (hereafter ‘FEDIL’) to the President of the Commission to attend an event of December 2015, reference Ares(2015)5827940 (hereafter ‘document 21’);

Letter of invitation from FEDIL to the President of the Commission to attend an event of 2 December 2015, reference Ares(2015)5562742 (hereafter ‘document 22’ and ‘document 22a’);

Letter of reply from the Office of the President of the Commission to FEDIL of 7 August 2015, reference Ares(2015)3310292 (hereafter ‘document 23’);

Letter of invitation from FEDIL to the President of the Commission to attend an event of 2 June 2015, reference Ares(2015)2347224 (hereafter ‘document 24’);


Letter of invitation from FEDIL to the President of the Commission to attend a conference of 22 May 2015, reference Ares(2015)2178587 (hereafter ‘document 26’, ‘document 26a’ and ‘document 26b’); and

E-mail exchange between the American Chamber of Commerce to the EU and the Office of the President of the Commission regarding a meeting of January and February 2015, reference Ares(2015)502528 (hereafter ‘document 27’).
2. **ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001**

Following our assessment, I hereby inform you that wide partial access is granted to the requested documents, subject only to the redaction 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 in section 2.2 below.

### 2.1. Consultation of third parties

As regards the document 9b and the document 9c, in particular, originating from a third party (the ETUC) and referring to background documents setting forth that third party’s position in respect of the issues addressed therein, the Commission consulted the third party in accordance with Article 4(4) of Regulation (EC) No 1049/2001 with a view to assessing whether an exception in paragraph 1 or 2 of Article 4 of Regulation (EC) No 1049/2001 is applicable.

By its reply to the Commission, the third party confirmed that it does not object to, and therefore agrees with the disclosure of these documents originating from it.

Following this consultation, I hereby inform you that wide partial access is granted also to these documents, subject only to the redaction 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 in section 2.2 below.

Please note that the majority of the documents falling within the scope of your request originate from third parties. They are disclosed for information only and cannot be reused without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

### 2.2. Protection of privacy and the integrity of the individual

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union 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/EC² (hereafter ‘Regulation (EU) 2018/1725’).

---

The documents to which you request access contain personal data, in particular the names, functions, contact details (email addresses, telephone and office numbers) pertaining to staff members of the Commission not holding any senior management positions, as well as to third party individuals who are not considered as public figures acting in their public capacity.

Indeed, Article 3(1) of Regulation (EU) 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.³

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.⁴

In its judgment in Case C-28/08 P (Bavarian Lager)⁵, 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.⁶

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

In your application, you indicate that your address is outside EU/EEA. The public disclosure of the personal data contained in the document(s) requested would therefore constitute processing (transfer) of personal data within the meaning of Chapter V of Regulation (EU) 2018/1725.

According to Article 47(1) of that regulation, and unless the conditions of Article 48 are met, a transfer of personal data to a third country or international organisation may take place only where the Commission has decided pursuant to Article 45(3) of Regulation (EU) 2016/679 or to Article 36(3) of Directive (EU) 2016/680 that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection and where the personal data are transferred solely to allow tasks within the competence of the controller to be carried out.

---
⁶ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation (EU) 2018/1725.
We consider that, with the information available, the fulfilment of these conditions has not been established. Therefore, we are disclosing the documents requested from which these personal data have been redacted.

3. **OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

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.

4. **PARTIAL ACCESS**

Please note that partial access is granted to the requested documents.

5. **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 this position, including in case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data.

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  
Unit C.1. ‘Transparency, Document Management and Access to Documents’  
BERL 7/076  
B-1049 Brussels  
or by email to: sg-acc-doc@ec.europa.eu.

Yours faithfully,

Tatjana Verrier  
Director

Enclosures: (43)