



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels,
TRADE/SW/D3 (2020) 7701571

***By registered letter with
acknowledgment of receipt***

Aisha Down
Emerika Bluma 8
71000 Sarajevo
Bosnia and Herzegovina

Advance copy by email:
aisha@occrp.org

Subject: Your application for access to documents - Ref GestDem 2020/0189

Dear Ms Down,

I refer to your e-mail dated 10 January 2020 in which you make a request for access to documents in accordance with Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001"), registered on the same day under the above mentioned reference number.

1. SCOPE OF YOUR REQUEST

You request access to the following documents:

1. After a previous Access to Document Request filed by Olivier Hoedeman at Corporate Europe Observatory, GestDem No 2018/2850, DG Trade released the documents listed in the attached table. This table mentions three documents related to contacts between DG Trade and British American Tobacco on the subject of tobacco trade from Belarus. (Ares(2017) 1553728). We have examined those documents and found that there appears to be a document missing. In particular, the email (attached) notes that two PowerPoint presentations were attached to the exchange. Only one of these was released. The other document is just minutes of the meeting, though its title suggests a PowerPoint should be included. We request that you release to us both PowerPoint presentations.

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

2. Furthermore, we request all documents (minutes, presentations, and correspondence) pertaining to all contacts between the tobacco industry and DG Trade related to Belarus since January 1, 2016.

We have identified **4 documents** falling within the scope of your request. For ease of reference, we enclose a list of these documents, with reference numbers, in Annex 1. For each of them, the list provides a description and indicates whether parts are withheld and, if so, under which ground pursuant to Regulation 1049/2001. Please note that document 2 is sub-divided into three different sections (a, b and c).

Please be also informed that contrary to what you have suggested in point 1 of your request (see above), document 2 (Ares(2017) 1553728) does not include two, but only one PowerPoint presentation; the reference to two such presentations in the e-mail that you have referred to was erroneous.

2. ASSESSMENT AND CONCLUSION UNDER REGULATION 1049/2001

In accordance with settled case law², 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 poses a “*reasonably foreseeable and not purely hypothetical*” risk of undermining the protection of the interest covered by the exception. Third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Articles 4.2 and 4.3 of Regulation 1049/2001, the institution is required “*to ascertain whether there is any overriding public interest justifying disclosure*”³.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents⁴, “*the exceptions to that right [...] must be interpreted and applied strictly*”⁵.

Having examined the requested documents under the applicable legal framework, **full access is granted to documents 2.b and 2.c. We disclose the remaining documents 1 and 2.a partially.** Some parts of **documents 1 and 2.a** do not fall within the scope of your request and have thus been redacted.

² Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

³ *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52 and 64.

⁴ Regulation (EC) No 1049/2001, recital (4).

⁵ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

Moreover, some personal data have been redacted in **documents 1 and 2.a** in accordance with Art. 4 (1)(b) of Regulation 1049/2001.

The reasons justifying the application of this exception are set out below.

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/EC⁶ (‘Regulation 2018/1725’).

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.⁷ 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.⁸

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁹, 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.¹⁰

Documents 1 and 2.a contain personal information such as names, e-mail addresses or telephone numbers that allows the identification of natural persons. In line with the Commission’s commitment to ensure transparency and accountability, the names of the senior management of the Commission (at Director level and above) are disclosed.

In principle, the names of organisations and companies as such do not constitute personal data within the meaning of Article 2(a) of Regulation 45/2001. For this reason, the names of organisations and companies are disclosed. In addition, transparency register numbers,

⁶ Official Journal L 205 of 21.11.2018, p. 39.

⁷ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

⁸ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, ECLI:EU:T:2018:560.

⁹ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

¹⁰ 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 2018/1725.

which do not allow the identification of an individual staff member of these companies, are disclosed.

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 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 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 concerned.

You may re-use the Commission documents disclosed free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the re-use.

In case you would disagree with the assessment provided in this reply, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, 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 unit SG-C-1
BERL 7/076
1049 Brussels

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

Yours sincerely,

Sabine WEYAND

Enclosures: List of documents
 Disclosed documents