



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels
E.1/JVH/dd (2020) 702939

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

Mr Fabian Flues
Greifswalder Str. 4
10405 Berlin
Germany

Advance copy by email:
ask+request-7402-
bdb1631f@asktheeu.org

Subject: Your application for access to documents – Ref GestDem 2019/6028

Dear Mr Flues,

I refer to your application dated 23/10/2019, in which you make a request for access to documents under Regulation (EC) No 1049/2001¹, registered on the same date under the above mentioned reference number. In your request, you asked for access to:

“All communication (including letters, e-mails and faxes) as well as any meeting records (including agendas, participant lists, Commission briefing papers and minutes) between officials at DG Trade (including the Commissioner and her cabinet) and

- 1) The office of the United States Trade Representative (USTR) including all staff;*
- 2) the office of the United States Secretary of Commerce including all staff;*
- 3) representatives of European businesses, business associations and lobby consultancies;*
- 4) representatives of US businesses, business associations and lobby consultancies;*
- 5) other officials of the European Commission, including DG ENER, DG ENVI, DG CLIMA and the office of the President of the European Commission*

on the issue of liquefied natural gas (LNG) imports from the United States into the European Union between 1. January 2018 and 30 September 2019.”

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).

1. 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 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".

Concerning your access to documents request, I can inform you that we have identified **10 documents** held by the Directorate-General for Trade that fall within the scope of your request. The ten identified documents are listed for ease of reference in Annex I. For each of the documents the Annex provides a description and indicates whether parts are withheld and if so, under which ground pursuant to Regulation 1049/2001. Copies of the accessible documents are enclosed to this letter.

Having examined the requested documents under the applicable legal framework, I am pleased to grant you partial access to **documents 1, 2, 4, 5, 6, 7, 8 and 10** and to refer you to the **documents 3 and 9** that are publicly available on the Commission's website.

In **documents 1, 2, 4, 5, 6, 7, 8 and 10** names and other personal data have been redacted pursuant to article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 2018/1725. Hence, the main content of these documents relevant to your request is accessible.

In **documents 4, 7 and 10**, in addition to personal data, additional information was redacted as it is covered by the exception set out in article 4(1)(a) third indent of Regulation 1049/2001 (protection of the public interest as regards international relations).

Please note that parts of **documents 1, 2, 4, 5, 6, 7 and 10** that do not relate to your request have been redacted as falling out of scope.

The reasons justifying the application of the above-mentioned exceptions are set out below in sections 2 and 3.

2. Protection of the public interest as regards international relations (documents 4, 7 and 10)

Having carefully examined **document 4, 7 and 10**, we inform you that some parts have been redacted because there is a reasonably foreseeable and not purely hypothetical risk that its disclosure would undermine the protection of the public interest as regards international relations, as set out in Article 4(1)(a) third indent of Regulation 1049/2001.

The documents contain informal positions of the US government on matters related to US LNG production and exports and US internal decision-making processes. These opinions and comments stem from contacts between the Commission and the US Government and are listed for internal use regarding the deliberations between the Commission and its US interlocutors.

According to settled case-law, "the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation 1049/2001, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation"². In this context, the Court of Justice has acknowledged that the institutions enjoy "a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest"³.

Disclosure of the documents requested by you would undermine the protection of the public interest as regards international relations, because it would risk harming the European Union's relations with the US, as it would put in the public domain informal US comments and sensitive negotiating positions that have been shared in confidence. The disclosure of this information could also be used by third countries to bring an undue pressure on the Commission in support of European interests and unduly limit the room for manoeuvre of the European Union on the international stage and jeopardise the European Union's international position.

3. Protection of the privacy and integrity of the individual (documents 1, 2, 4, 5, 6, 7, 8 and 10)

Pursuant to Article 4(1)(b) of Regulation 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 (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/EC⁴ ('Regulation 2018/1725').

Documents 1, 2, 4, 5, 6, 7, 8 and 10 contain personal information, such as names, e-mail addresses, telephone numbers that allow the identification of natural persons, as well as other personal information.

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,

² Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35.

³ Judgment in *Council v Sophie in 't Veld*, C-350/12P, EU:C:2014:2039, paragraph 63.

⁴ Official Journal L 205 of 21.11.2018, p. 39.

is linked to a particular person is to be considered as personal data.⁵ 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.⁶

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁷, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁸

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, 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 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

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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.

legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

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
BERL 7/76
BE - 1049 Bruxelles

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'S. Weyand', with a stylized flourish at the end.

Sabine WEYAND