



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels
C3/MJ/AN/alf (2020) 710617

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

Ms Mute Schimpf
Friends of the Earth Europe
26 rue d'Edimbourg
1050 Brussels

***Advance copy by email:
ask+request-7517-
abdcbl62@asktheeu.org***

**Subject: Your application for access to documents –
Ref GestDem No 2019/7281**

Dear Ms Schimpf,

I refer to your email of 16 December 2019 in which you request access to documents under Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001"). Your request has been registered under the reference number GestDem No 2019/7281.

1. SCOPE OF YOUR REQUEST

You requested access to:

- *A list of meetings since May 2016 between DG TRADE officials and/or representatives (including the Commissioner and the Cabinet) and representatives of companies; representatives of business associations or other organisations (including law firms) representing the interests of companies; in which the EU-Mercosur Trade Agreement was discussed;*
- *the minutes and other reports of these meetings;*
- *all correspondence (including emails, letters, phone conversations, memos) since May 2016 between DG TRADE officials and/or representatives (including the*

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.

Commissioner and the Cabinet) and representatives of companies; representatives of business associations or other organisations (including law firms) representing the interests of companies; in which the EU-Mercosur Trade Agreement was discussed.

Because of the very broad scope of your request, we have asked you on 8 January 2020 to specify the type of documents or topics, or time period you are interested in. In the absence of your reply, we have reduced the scope as explained below.

We are providing you with a representative sample of meeting reports and correspondence starting mid-2017 with a number of stakeholders, including representatives of European companies and representatives of associations and other organisms in which the EU-Mercosur Trade Agreement was discussed. We have also included meeting reports and correspondence with different stakeholders, including representatives of Civil Society Organisations, business association and companies where the EU-Mercosur Trade agreement was discussed or mentioned.

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 1049/2001.²

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 would undermine the protection of the interest covered by the exception. Third, the risk of that interest being undermined must be "*reasonably foreseeable and not purely hypothetical*".³ If the institution 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*".⁴

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents⁵, "*the exceptions to that right [...] must be interpreted and applied strictly*".⁶

In reply to your request the Commission has identified **24 documents** (see list attached).

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 *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.

⁵ Regulation (EC) No 1049/2001, recital (4).

⁶ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

Having carefully examined your request in light of the applicable framework, I have the pleasure to inform you that partial access can be granted to the **24 documents**. Some parts of the documents have not been disclosed if their content has been considered out of scope. In the case of only three documents, disclosure of their content would undermine the protection of international relations pursuant to Article 4.1(a) 3rd indent or the protection of commercial interests of a natural or legal person pursuant Article 4.2 1st indent. In addition, personal data have been redacted from all documents, pursuant to Article 4.1(b) of Regulation 1049/2001. The reasons justifying the application of the exceptions are set out below in sections 2.1 to 2.4.

Copies of the accessible documents are enclosed.

2.1 Protection of the privacy and the integrity of the individual (documents 1-24)

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/EC7 ('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.⁸ 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.⁹

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹⁰, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable¹¹.

⁷ Official Journal L 205 of 21.11.2018, p. 39.

⁸ 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.

⁹ 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.

¹⁰ 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.

¹¹ 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

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

2.2 Protection of the public interest as regards to international relations (documents 23 and 24)

Article 4(1)(a) third indent of Regulation 1049/2001 provides that *"[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (a) the public interest as regards: [...] international relations"*.

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.

According to settled case-law, *"the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 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"*.¹² In this context, the Court of Justice of the EU 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"*.¹³

The General Court found that *"it is possible that the disclosure of European Union positions in international negotiations could damage the protection of the public interest as regards international relations"* and *"have a negative effect on the negotiating position of the European Union"* as well as *"reveal, indirectly, those of other parties to the negotiations"*.¹⁴ Moreover, *"the positions taken by the Union are, by definition, subject to change depending on the course of those negotiations and on concessions and compromises made in that context by the various stakeholders. The formulation of negotiating positions may involve a number of tactical considerations on the part of the negotiators, including the Union itself. In that context, it cannot be precluded that disclosure by the Union, to the public, of its own negotiating positions, when the negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating capacity of the Union"*.¹⁵

As explained some parts of documents 23 and 24 cannot be disclosed as the Commission considers it is necessary to protect confidential negotiation positions and not to disclose information, which could undermine the mutual trust in the negotiations and the bilateral relations with the countries concerned.

2.3 Protection of commercial interests (document 22)

Article 4(2) first indent of Regulation 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"*.

While not all information concerning a company and its business relations can be regarded as falling under the exception of Article 4(2) first indent¹⁶, part of **document 22** cannot be disclosed in light of the need to protect commercial interests of the

¹² Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

¹³ Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

¹⁴ Judgment in *Sophie in't Veld v Commission*, T-301/10, EU:T:2013:135, paragraphs 123-125.

¹⁵ *Id.*, paragraph 125.

¹⁶ Judgment in *Terezakis v Commission*, T-380/04, EU:T:2008:19, paragraph 93.

organisation in question. The disclosure of this information would undermine the protection of the relevant commercial interests of the European chemical sector and disclose sensitive elements in relation to their priorities and negotiating position.

2.4 Overriding public interest in disclosure

The exception laid down in Article 4(2) first indent of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. Such an interest must, first, be public and, secondly, outweigh the harm caused by disclosure. Accordingly, the presence of an overriding public interest to disclose has also been assessed. In the present case, there is no such evidence. To the contrary, the prevailing interest in this case lies in protecting the legitimate interests concerned.

I take this opportunity to remind you that the documents provided in the attachment to this letter may not be copied or reproduced for commercial purposes without prior consultation with the European Commission.

3. MEANS OF REDRESS

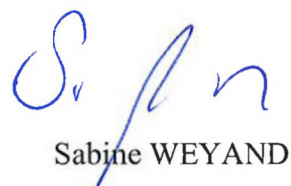
In case you disagree with the assessment contained in this reply you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

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 (SG.C.1)
BERL 7/76
B-1049 Bruxelles

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

Yours sincerely,



Sabine WEYAND

Annexes: List of documents
24 documents partially disclosed