



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels,  
TRADE/SW/A5 (2020)1837707

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

Ms Lora Verheecke  
9 rue de Bronze,  
1070 Anderlecht  
Belgium

***Advance copy by email:***  
ask+request-7636-e638d306@asktheeu.org

**Subject: Your application for access to documents – Ref GestDem 2020/0685**

Dear Ms Verheecke,

I refer to your request of 03 February 2020 for access to documents under Regulation (EC) No 1049/2001<sup>1</sup> ("Regulation 1049/2001") and hereinafter registered on 04 February 2020 as GestDem 2020/0685.

## **1. SCOPE OF YOUR REQUEST**

In your application, you request access to the following documents:

*“all communication, including emails, and documents (agenda, minutes, list of participants, etc) related to the meeting between Phil Hogan and the EU-ASEAN Business Council on 12th December 2019”.*

Based on the scope of your request as outlined above, we have identified **one meeting report**.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

In accordance with settled case law<sup>2</sup>, 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

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<sup>1</sup> 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.

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 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*”<sup>3</sup>.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents<sup>4</sup>, “*the exceptions to that right [...] must be interpreted and applied strictly*”<sup>5</sup>.

I would like to inform you that partial access can be granted to the content of document Ares(2020)1566502 . Some parts of it have been redacted pursuant to Article 4.1(a) and to Article 4(1)(b) of Regulation 1049/2001. The legal reasoning underlying the application of the exceptions are set out below.

## **2.1. Protection of privacy and 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 (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’).

This meeting report contains 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

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<sup>2</sup> 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.

<sup>3</sup> *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.

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

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

<sup>6</sup> *Official Journal L 205 of 21.11.2018, p. 39.*

to a particular person is to be considered as personal data.<sup>7</sup> 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.<sup>8</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>9</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation is fully applicable<sup>10</sup>

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

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<sup>7</sup> Judgment of the Court of Justice 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.

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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.

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.

**This meeting report** contains names and other personal information that allows the identification of natural persons, which have been redacted.

## 2.2 Protection of the public interest as regards international relations

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: the public interest as regards: [...] international relations”.

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"*.<sup>11</sup> 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"*.<sup>12</sup>

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"*.<sup>13</sup> 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"*.<sup>14</sup>

The withheld passages reveal the position of decision makers from Indonesia and conversations of EUBC with these persons. Such disclosure is likely to upset the mutual trust between the EU and Indonesia and thus undermine our bilateral relations with Indonesia. It may also

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<sup>11</sup> Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

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

<sup>13</sup> Judgment in *Sophie in 't Veld v Commission*, T-301/10, EU:T:2013:135, paragraphs 123-125.

<sup>14</sup> *Id.*, paragraph 125.

jeopardise the mutual trust between the EU and other trading partners as they may fear that in the future their positions would be exposed and they may as a result refrain from engaging with the EU.

Negotiating partners need to be able to confide in each other's discretion and to trust that they can engage in open and frank exchanges of views without having to fear that these views and positions may in the future be publicly revealed. As the Court recognised in Case T-301/10 *in 't Veld v Commission*, “[...] establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise”<sup>15</sup>.

The abovementioned passages must, therefore, remain protected.

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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.C1)  
BERL 7/706  
1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Sabine WEYAND

Enclosure: Released meeting report

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<sup>15</sup> Judgment in *Sophie in 't Veld v European Commission*, T-301/10, EU:T:2013:135, paragraph 126.