



EUROPEAN COMMISSION
DIRECTORATE GENERAL FOR TRADE

The Director General

 Ref. Ares(2020)2271582 - 28/04/2020

Brussels,
TRADE/SW/D.3 (2020)1579206

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

Mr Kenneth Haar
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1415 Copenhagen K
Denmark

Advance copy by email:
[ask+request-7722-
c9db8be7@asktheeu.org](mailto:ask+request-7722-c9db8be7@asktheeu.org)

Subject: Your application for access to documents – Ref GestDem No 2020/1258

Dear Mr Haar,

We refer to your e-mail dated 02/03/2020 in which you make a request for access to documents, registered on 02/03/2020 under the above-mentioned reference number.

1. Scope of your request

You have requested access to the following documents:

- *All written communication since 1 October 2019 between DG Trade, the Trade Commissioner and his cabinet AND Bayer, Syngenta, The International Seed Federation (ISF), ASTA, ESA, CropLife International, and the Biotechnological Innovation Organization, including emails and any other kind of written communication between the two institutions;*
- *A list of meetings and the minutes of meetings between DG Trade, the Trade Commissioner and his cabinet AND Bayer, Syngenta, The International Seed Federation (ISF), ASTA, ESA, CropLife International, and the Biotechnological Innovation Organization since 1 October 2019.*

2. Assessment and conclusions under Regulation 1049/2001

In accordance with settled case law¹, 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 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*"².

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents³, "*the exceptions to that right [...] must be interpreted and applied strictly*"⁴.

With regard to part 2 of your request, we inform you as follows. Information on meetings of the Commission (including his Cabinet) are published on his website⁵ while information on meetings with the Director-General can be found on a different webpage⁶. Meetings held by other DG Trade officials are not systematically listed in a way indicated in your request. As specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that Regulation applies only to existing documents in the possession of the institution. Given that no such document corresponding to the description given in your application is held by DG Trade, we are only in a position to refer you to the websites indicated above.

On careful examination of the remaining part of your request, we have identified **1 document**:

1. Ares(2017)4306621

Flash report Meeting CEOs seed companies, 17 February 2020.

I am pleased to inform you that this document can be partially released. The personal data in this document have been redacted pursuant to Article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation 2018/1725. A mention which relates to a matter where the decision has not been taken by the Commission has also been redacted pursuant to Article 4.3 of Regulation 1049/2001. The reasons justifying the application of these exceptions are set out below in sections 2.1 and 2.2.

¹ 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.

² *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.

³ Regulation (EC) No 1049/2001, recital (4).

⁴ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

⁵ https://ec.europa.eu/commission/commissioners/2019-2024/hogan_en#calendar

⁶ <https://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=5f4689e0-014c-4bec-8125-f9e6d3592c86>

I would also like to inform you that the final version of the relevant Council decision has been published on the Council webpage and can be found under following link:

<https://data.consilium.europa.eu/doc/document/ST-14734-2019-INIT/en/pdf>.

2.1. Protection of the privacy and the integrity of the individual

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/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

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.

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 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 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 these personal 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 no 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 institution's decision-making process

Moreover, the document refers to a matter where the decision has not been taken by the Commission. As disclosure of this portion of the document would result in undermining the Commission's decision-making process, it shall be refused pursuant to Article 4.3 of Regulation 1049/2001, first paragraph, whereby access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

3. Overriding public interest

The exception laid down in Article 4(3) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the document. Such an interest must, first, be public and second, outweigh the harm caused by disclosure. Accordingly, we have also considered whether the risks attached to the release of the protected passage are outweighed by the public interest in assessing the requested document. We have not been able to identify any such public interest capable of overriding protected interests.

You may reuse the documents requested 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. The Commission does not assume liability stemming from the reuse.

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 unit SG-C-1
BERL 7/706
BE - 1049 Bruxelles

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

Yours sincerely,

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

Sabine WEYAND

Enclosure: (1) Redacted document