



EUROPEAN COMMISSION

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Corporate Europe Observatory
Rue d'Edimbourg 26
1050 Bruxelles

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2019/0939**

Dear [REDACTED]

I refer to your letter of 17 May 2019, registered on the same day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation (EC) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 14 February 2019, addressed to the Directorate-General for Environment, you requested access to 'a list of all lobby meetings held by DG Environment since 31 May 2018 where single-use plastics were discussed. The list should include the names of the individuals and organisations attending; the date; and any minutes / notes produced. I would additionally like to receive any emails or other correspondence related to these meetings'.

The European Commission has identified a list of meetings and several documents related to these meetings.

In its initial reply of 15 May 2019, the Directorate-General for Environment granted full access to the list and wide partial access to 21 documents subject to the redaction of personal data based on Article 4(1)(b) of Regulation (EC) No 1049/2001 mentioned above.

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

However, access was refused to the following two documents based on the exception of the first indent of Article 4(2) (protection of commercial interests of a natural or legal person, including intellectual property) of Regulation (EC) No 1049/2001:

- List item no. 18: a document prepared by PricewaterhouseCoopers and submitted to the meeting of Unit B.1 of Directorate-General for Environment with Coca-Cola European Partners on 23 November 2018, reference Ares(2018)6211158 (hereafter ‘document 1’); and
- List item no. 22: a document prepared by TetraPak for its meeting of [REDACTED] and Unit B.1 of Directorate-General for Environment on 30 November 2018, reference Ares(2018)6236948 (hereafter ‘document 2’, document 1 and document 2 hereafter together ‘requested documents’).

In your confirmatory application, you request a review of the initial decision in relation to these two documents only. You do not contest the redaction of personal data. Therefore, the scope of the confirmatory review is limited to the requested documents.

You support your request with detailed arguments, which I will address to the extent necessary in the corresponding sections below.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Please note that as the requested documents originated from third parties, the Commission had to consult, in line with Article 4(4) of Regulation (EC) No 1049/2001, these third parties as originators of the requested documents.

Following this review, I can inform you that:

- full access is granted to document 1; and
- wide partial access is granted to document 2 subject to redactions based on the exception of the first indent of Article 4(2) (protection of commercial interests of a natural or legal person, including intellectual property) of Regulation (EC) No 1049/2001, for the reasons set out below.

The first indent of Article 4(2) of Regulation (EC) No 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’.

The redacted data in document 2 outline the breakdown of investment that an individual company foresees in order to achieve compliance with new regulations. Disclosing information on the expected compliance cost of a single market player would affect the competitive position of that company vis-à-vis its competitors, as it would reveal details of its financial planning in the context of its compliance strategy. In particular, it would reveal the breakdown of its development spending, capital investment and human resources devoted to compliance in each of the different phases of the production: project and concept definition, prototype development, product validation and global deployment. Such disclosure might have significant effects in relation to the competitive position of the company.

As the Court of Justice established, ‘information may be considered to be sensitive commercial information the disclosure of which would be likely to harm the commercial interests of the undertakings operating such facilities, since such data is significant of the costs borne by the undertakings concerned and, by therefore, their competitive position’.³ Thus, the case-law confirms that certain parts of document 2 cannot be disclosed without undermining the protection of the commercial interests of the company concerned.

Therefore, I conclude that partial access can be granted to document 2 by redacting the data that form part of the predicted compliance cost analysis of the company concerned.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your confirmatory application, you argue that ‘[t]he issues relating to tethered caps, packaging sizes, and which products were to be regulated, were very significant during the negotiations on the Commission’s single use plastics proposal, and we are aware that substantial lobbying went on, demonstrating that there is a strong public interest for such information to be in the public domain.’

The above considerations do not prove that the disclosure of the withheld parts of document 2 constitute an overriding public interest that outweighs the interest of the company concerned to protect its commercially sensitive data, which, if disclosed, would actually and non-hypothetically risk to cause damages to the company concerned.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, partial access has been granted to document 2.

³ Judgment of the General Court of 11 July 2018, *Rogesa v Commission*, T-643/13, EU:T:2018:423, paragraph 77.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission



CERTIFIED COPY
For the Secretary-General,



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Enclosures: 2