



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR TRADE

Directorate C – Africa, Caribbean and Pacific, Asia (II), Trade and Sustainable Development, Green Deal  
South and South East Asia, Australia, New Zealand

Brussels  
TRADE.C.2/DB/ak/(2022)9177537

Ms. Lora Verheecke  
[request-12174-](#)  
[b52e7520@asktheeu.org](mailto:b52e7520@asktheeu.org)

**Delivery via the EASE portal**

**Subject: Your application for access to documents – EASE 2022/6622**

Dear Ms. Verheecke,

I refer to your request of 15 November 2022 for access to documents under Regulation (EC) No 1049/2001<sup>1</sup> ("Regulation 1049/2001").

**1. SCOPE OF YOUR REQUEST**

Under the present request EASE 2022/6622, you are requesting access to “*All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, transcripts and recordings) AND the meeting minutes/notes relating to the meeting between FoodDrinkEurope Trade Group and DG Trade on 12th July 2022*”.

**The present request assesses a total of two document: the report of the meeting in object (document 1) and the list of participants (document 2).**

**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

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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.

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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 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>.

Having examined the requested documents under the applicable legal framework, I am pleased to convey that the content of **the two documents is fully accessible**, with the exception of elements concerning the protection of privacy and integrity of the individual, which were redacted pursuant to Article 4(1)(b) of Regulation 1049/2001.

The reasons justifying the application of the exceptions are set out below in Sections 3.

### 3. PROTECTION OF PRIVACY AND INTEGRITY OF THE INDIVIDUALS

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 (EU) 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/EC (‘Regulation 2018/1725’).

All documents partially released contain personal information, such as names, e-mail addresses or 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

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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.

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.<sup>6</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>7</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable<sup>8</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 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.

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<sup>6</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

<sup>7</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>8</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.

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.

These documents were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Trade. They solely reflect the author's interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which was not consulted on its content. They do not reflect the position of the Commission and cannot be quoted as such.

#### **4. PARTIAL ACCESS**

Pursuant to Article 4(6) of Regulation 1049/2001 "*[i]f only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released*". After a careful review, we have concluded that we can release all texts with the exception of the information redacted.

A copy of the accessible document is enclosed.

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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:

Secretary-General

Transparency, Document Management & Access to Documents unit SG-C-1  
European Commission

BERL 7/76

1049 Brussels

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

Yours faithfully,

Electronically signed

Christophe KIENER  
Head of Unit

Enclosures (2): Minutes of the meeting (redacted)  
List of participants (redacted)