



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels
TRADE/SW/D2 (2023)2908021

Ms Anne Bundschuh
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Greifswalder Str. 4
10405 Berlin
GERMANY

**By email only –with request for
explicit acknowledgment of receipt
by email reply:**
ask+request-12356-0c404fda@asktheeu.org

Subject: Your application for access to documents – EASE 2022/7351

Dear Ms Bundschuh,

I refer to your application dated 20 December 2022, registered on the same date under the above-mentioned reference number, by which you request public access to documents under Regulation (EC) No 1049/2001¹ ('Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your request, you asked for access as follows:

'(i) a list of meetings of DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of car companies or car industry associations, such as Audi, BMW, Daimler, Fiat Chrysler Automobiles, Groupe PSA, Mercedes Benz, Stellantis, Volkswagen, European Automobile Manufacturers Association (ACEA), Verband der Automobilindustrie (VDA), in

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 (Official Journal OJ L 145, 31.5.2001, p. 43).

which the modernization of the EU-Mexico trade agreement was discussed (since 1 January 2016);

- (ii) detailed minutes and other reports of these meetings;*
- (iii) all correspondence (including emails, letters, phone calls) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of car companies or car industry associations, such as Audi, BMW, Daimler, Fiat Chrysler Automobiles, Groupe PSA, Mercedes Benz, Stellantis, Volkswagen, European Automobile Manufacturers Association (ACEA), Verband der Automobilindustrie (VDA), in which the modernization of the EU-Mexico trade agreement was discussed (since 1 January 2016).'*

In reply to your request **15 documents** have been identified. For details and numbering kindly refer to the enclosed annex document 'List of identified documents'.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

Having examined the requested documents under the applicable legal framework, I am pleased to grant you full access to **document 7** (cf. [Circabc \(europa.eu\)](https://circabc.europa.eu/ui/group/e9d50ad8-e41f-4379-839a-fdfe08f0aa96/library/87f8f80f-0d39-47c8-a8ba-d12b8b6e9753/details) – <https://circabc.europa.eu/ui/group/e9d50ad8-e41f-4379-839a-fdfe08f0aa96/library/87f8f80f-0d39-47c8-a8ba-d12b8b6e9753/details>) and partial access to **documents 1-6 and 8-15**. For your convenience, the documents are listed in the Annex 'List of identified documents' attached to this reply. Please note that when the modernisation of the EU-Mexico trade agreement was not the only topic discussed in meetings, the parts of the documents which were out of the scope of the request (i.e. covering other agenda points) have been redacted.

In **documents 1-6, 8 and 10-15** names and other personal data have been redacted pursuant to Article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 2018/1725. Hence, the main content of these documents relevant to your request is accessible.

In **documents 3, 4, 8, 9, 13 and 15** in addition to personal data, certain additional elements required redaction, as this additional information is covered by the exceptions under Article 4(2), first indent of Regulation 1049/2001 (protection of commercial interests of a natural or legal person, including intellectual property – documents 13 and 15) or by the exception under Article 4(1)(a), third indent of Regulation 1049/2001 (protection of the public interests as regards international relations – documents 3, 4, 8, 9 and 15), respectively.

The reasons justifying the application of the three exceptions referred to above are set out below.

2.1. PROTECTION OF THE PRIVACY AND INTEGRITY OF THE INDIVIDUAL (DOCUMENTS 1-6, 8 AND 10-15)

With regard to **documents 1-6, 8 and 10-15** partial access is granted, but a complete disclosure of the identified documents is prevented by the exception concerning the

protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons and/or;
- handwritten signatures/abbreviated signatures and/or other handwritings of natural persons;
- other information relating to an identified or identifiable natural person.

Under 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 currently applicable legislation regarding the protection of personal data is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018² (‘Regulation 2018/1725’).

Article 3(1) of Regulation 2018/1725 states that personal data *‘means any information relating to an identified or identifiable natural person [...]’*. The Court of Justice has indicated 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.³ Names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are thus to be considered personal data.⁴

Article 9(1)(b) of Regulation 2018/1725 does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data, nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and as 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 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, OJ L 205, 21.11.2018, p. 39.

³ See judgment in *Nowak*, C-434/16, EU:T:2018:560, points 33 to 35.

⁴ Judgment in *Chambre de commerce et d’industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, T-39/17, EU:T:2018:560, points 43 and 44.

2.2. PROTECTION OF COMMERCIAL INTERESTS (DOCUMENTS 13 AND 15)

2.2.1. Relevance of Article 4(2), first indent of Regulation 1049/2001 in relation to documents 13 and 15

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 indent⁵ of Regulation 1049/2001, it appears that the type of information covered by the notion of commercial interests would generally be of the kind protected under the obligation of professional secrecy⁶. Accordingly, it must be information that is *‘known only to a limited number of persons’*, *‘whose disclosure is liable to cause serious harm to the person who has provided it or to third parties’* and for which *‘the interests liable to be harmed by disclosure must, objectively, be worthy of protection’*⁷.

The requested documents refer to publicly undisclosed information on contractual arrangements between private parties. The release of such information would undermine the protection of the commercial interests of those parties; therefore the release of the respective parts of documents 13 and 15 is prevented by Article 4(2), first indent of Regulation 1049/2001.

2.2.2. Overriding public interest

The exception of Article 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property) 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, secondly, outweigh the harm caused by disclosure.

Accordingly, we have considered whether the risks attached to the release of the withheld parts of **documents 13 and 15** are outweighed by the public interest in accessing the requested document. We have not been able to identify any such public interest capable of overriding the commercial interests of the companies concerned. In the present case, there is no such evidence.

2.3. PROTECTION OF INTERNATIONAL RELATIONS UNDER ARTICLE 4(1)(A), THIRD INDENT OF REGULATION 1049/2001 (DOCUMENTS 3, 4, 8, 9 AND 15)

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’*.

⁵ Judgment in *Terezakis v Commission*, T-380/04, EU:T:2008:19, point 93.

⁶ See Article 339 of the Treaty on the Functioning of the European Union.

⁷ Judgment in *Bank Austria v Commission*, T-198/03, EU:T:2006:136, point 29.

According to settled case-law, ‘the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation 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’⁸. 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’⁹.

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’¹⁰. 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’¹¹.

In **documents 3, 4, 8, 9 and 15** we consider that the confidentiality of parts of the requested documents are fully protected by a coherent application of the third indent of Article 4(1)(a) and that therefore access to those parts has to be refused.

3. DISCLAIMER(S)

Please kindly pay attention to the following: you may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf, based on [Commission Decision 2011/833/EU of 12 December 2011 on the re-use of Commission documents](#)¹². You may reuse the documents disclosed 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. Please note that the Commission does not assume any liability stemming from the reuse.

Furthermore, please note that documents containing content of third-party origin, i.e. either documents originating from third parties or documents containing parts of third party origin (**documents 7, 10, 11, 12 and 14** in the present case) are disclosed to you

⁸ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, point 35.

⁹ Judgment in *Council v Sophie in 't Veld*, C-350/12P, EU:C:2014:2039, point 63.

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

¹¹ *Id.*, point 125.

¹² OJ L 330, 14.12.2011, p. 39.

based on Regulation 1049/2001. However, disclosure of such third party content is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from the reuse of those documents or parts of documents, respectively.

Finally, **documents 1-6, 8-9, 13 and 15** were drawn up under the responsibility of the relevant Commission official. They solely reflect the author's interpretation of the interventions made and do not set out any official position of the third party/parties to which the documents refer, which were not consulted on their content. They do not necessarily reflect the position of the Commission and, therefore, cannot be quoted as such.

4. POSSIBILITY OF A CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled 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 Secretariat-General of the Commission, either by

- **by asking for a review via your portal¹³ account** (available only for initial requests submitted via the portal account), or
- **by email** to sg-acc-doc@ec.europa.eu, or
- **by letter post** to the following address:
European Commission
Secretariat-General
'Transparency, Document Management & Access to Documents' (unit SG C.1)
BERL 7/76
Rue de la Loi 200/Wetstraat 200
1049 Brussels
Belgium.

Yours sincerely,



Sabine WEYAND

Enclosures: (16) Annex 'List of identified documents',
15 documents (thereof 14 partially redacted)

¹³ <https://www.ec.europa.eu/transparency/documents-request>