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Directorate-General for Trade

Directorate A - Resources, Information and Policy Coordination
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Ms Vicky Cann
Corporate Europe Observatory (CEO)
Rue d'Edimbourg 26
1050 Brussels

By email only:
ask+request-3089-8f110e8c@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2016/3638

Dear Ms Cann,

I refer to your e-mail dated 29 June 2016 in which you make a request for access to documents under Regulation (EC) No 1049/2001 ("Regulation 1049/2001"),¹ registered on 30 June 2016 under the above mentioned reference number.

You request access to the following document:

"a list of meetings on the topic of the EU-US trade deal / TTIP between members of the DG Trade TTIP negotiating team [1] and interest representatives [2] between 1 November 2014 and today" [i.e. 29 June 2016, date of your application.]

In your application you specify that you would like the list to include the following information:

- *"date of the meeting;*
- *name and job title of the European Commission officials that were present (e.g. head of unit, etc.);*
- *names of interest representatives (company/organisation name) present at the meeting;*
- *names of the lobbyist(s) present;*
- *the sector they represented (business, NGOs, academia, think tanks as per categories of EU Transparency Register if they are registered),*

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, OJ L 145, 31.5.2001, p. 43.

[1] excluding the European Commissioner, her Cabinet and the Director-General, and

[2] including companies, consultancies and law firms, trade/business/professional associations, think tanks and NGO".

We have identified one document that falls under the scope of your request, which is a list of meetings with external stakeholders on TTIP dating from 10 April 2013 until 16 December 2015.

I am glad to inform you that this document can be **fully disclosed**.

The document contains most, but not all, of the information you have asked for.² Creating a list of meetings that contains all the items you have requested would mean creating a new document, which as such falls outside the scope of application of Regulation 1049/2001.

In this respect Article 10(3) of Regulation 1049/2001 stipulates that documents disclosed in reply to a request for access "*shall be supplied in an existing version and format*". The Court of Justice of the European Union has confirmed that Regulation 1049/2001 applies only to existing documents in the possession of the institution concerned³ and that "*[a]n application for access that would require the Commission to create a new document, even if that document were based on information already appearing in existing documents held by it, is not, therefore, an application for partial access and does not come within the parameters of Regulation No 1049/2001*".⁴ According to the Court, such a conclusion "*is implicitly confirmed by the rule in Article 10(3) of [Regulation 1049/2001]*".⁵

Even if a list of meetings containing all the information you have requested existed, which is not the case, some of this information, such as the names of Commission staff, would in any case be covered by the exception to the right of access set out in Article 4.1(b) of Regulation 1049/2001, as it constitutes personal data⁶ within the meaning of Article 2(a) of Regulation 45/2001⁷ and the cumulative conditions for the transfer of these data as established in Article 8(b)

² For TTIP-related meetings which took place between DG Trade representatives and external stakeholders in 2016, a list has not yet been created.

³ Judgment in *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 38. See also Article 2(3) of Regulation 1049/2001.

⁴ Judgment in *Typke v Commission*, T-214/13, EU:T:2015:448, paragraph 55.

⁵ *Ibid.*

⁶ In this respect, the Court of Justice has ruled that "*there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'*" and that "*surnames and forenames may be regarded as personal data*", including names of the staff of the institutions. See judgments in *Rechnungshof v Rundfunk and Others*, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73; *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68; *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

⁷ Regulation (EC) No 45/2001 of the European Parliament and the 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, OJ L 8, 12.1.2001, p. 1.

of the same Regulation, have not – based on the information available in your application – been satisfied.⁸

Finally, the creation of a new list would entail a disproportionate administrative burden for the Commission as the information requested would need to be individually extracted from hundreds of documents. In this respect, the Code of Good Administrative Behaviour requires the Commission to ensure *"that the application of this Code never leads to the imposition of administrative or budgetary burdens out of proportion to the benefit expected"*.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L. Güllner', with a long horizontal flourish extending to the right.

Lutz Güllner
Head of Unit

⁸ Article 8(b) of Regulation 45/2001 stipulates that personal data shall only be transferred to recipients if they establish *"the necessity of having the data transferred"* and additionally *"if there is no reason to assume that the legitimate interests of the data subjects might be prejudiced"*.