



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate A - Resources, Information and Policy Coordination
Information, Communication and Civil Society

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By registered letter with acknowledgment of receipt

Ms Nina Katzemich
LobbyControl e. V.
Am Justizzentrum 7
50939 Köln
Germany

Advance copy by email:
ask+request-3113-b9bb7804@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2016/3936

Dear Ms Katzemich,

I refer to your e-mail dated 11 July 2016 in which you make a request for access to documents under Regulation (EC) No 1049/2001 ("Regulation 1049/2001"),¹ registered on 13 July 2016 under the above mentioned reference number, as well as your follow-up clarification by email of 13 July 2016.

Please accept our apologies for the delay in providing you with this reply, which is mainly due to the fact that all units in DG Trade had to be consulted on this request.

1. SCOPE OF YOUR REQUEST

You requested access to the following documents:

“[...] all communication, specifically all emails and written communication with or concerning any of the law firms listed below, in the past year [i.e. 11 July 2015 - 11 July 2016]:

- *Bird & Bird*
- *Clifford Chance*
- *Gibson Dunn*

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.

- *Hogan Lovells*
- *K&L Gates*
- *Keller and Heckman*
- *Sidley Austin*
- *Van Bael & Bellis*
- *White & Case*

The request refers to the Commissioner, her Cabinet, Director General and all other DG Trade officials.”

While you had initially requested also a list of meetings with the above-listed law firms, in your follow up email of 13 July you clarified that your request covers only the reports of the meetings, in addition to the written communication with these firms.

Please note that we have interpreted your request as covering the activities of the above-listed law firms carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions.² We have therefore excluded from our search those interactions with the above-listed law firms where the latter represent clients in the context of the exercise of their procedural rights in administrative proceedings, and in relation to legal procedures established by EU and international law, such as anti-dumping cases or WTO disputes.

Further to our search, we have identified the following documents that fall under the scope of your request:

- the report of a meeting on 8 October 2015 between representatives of Celanese and lawyers from White & Case with DG Trade (Ares(2015)4200946) (“**document 1**”);
- an email exchange of 13 October 2015 from White and Case to DG Trade (Ares(2016)5785938) (“**document 2**”);
- an email from White & Case to DG Trade of 23 February 2016 enclosing a brief paper regarding the need for the special chemicals origin rule under the EU-Mexico FTA (Ares(2016)5785843) (“**document 3**”);
- an email exchange of 22-30 June 2016 between DG Trade and Hogan Lovells regarding the issue of rules of origins for exports from Ecuador to the EU, enclosing a note of 22 June 2016 on the same subject (Ares(2016)5789529) (“**document 4**”);
- an email of 1 July 2016 from Hogan Lovells to DG Trade enclosing a letter from the Ministry of External Trade of Ecuador to DG Trade (Ares(2016)5785982) (“**document 5**”);
- an email exchange of 19 February 2016 from White & Case to DG Trade (Ares(2016)1642802) (“**document 6**”).

² See Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation, OJ L 277, 19.9.2014, p. 1, Section III (“Activities covered”).

Having examined these documents in light of the applicable legal framework, **I am glad to fully release their content.** However, some personal data have been withheld in accordance with Article 4.1(b) of Regulation 1049/2001.

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 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.³ The Court of Justice has ruled that “where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data” “the provisions of Regulation 45/2001, of which Articles 8(b) and 18 constitute essential provisions, become applicable in their entirety”.⁴

Article 2(a) of Regulation 45/2001 provides that “‘personal data’ shall mean any information relating to an identified or identifiable natural person [...]”. The Court of Justice has confirmed that “there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of ‘private life’”⁵ and that “surnames and forenames may be regarded as personal data”⁶, including names of the staff of the institutions.⁷

In accordance with Article 8(b) of this Regulation, 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”. The Court of Justice has clarified that “it is for the person applying for access to establish the necessity of transferring that data”.⁸

I consider that you have not established the necessity of having the aforementioned personal data transferred to you. Moreover, it cannot be assumed on the basis of the information available, that disclosure of such personal data would not prejudice the legitimate interests of the persons concerned. Therefore, these personal data shall remain undisclosed in order to ensure the protection of the privacy and integrity of the individuals concerned.

³ 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 the free movement of such data, OJ L 8, 12.1.2001, p. 1.

⁴ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 101; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraphs 63 and 64.

⁵ Judgment in *Rechnungshof v Rundfunk and Others*, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁶ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

⁷ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

⁸ *Id.*, paragraph 107; see also judgment in *C-28/08 P Commission v Bavarian Lager*, EU:C:2010:378, paragraph 77.

In case you would disagree with the assessment that the withheld data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, 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 unit SG-B4
BERL 5/282
B-1049 Bruxelles

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lutz Güllner', with a stylized, cursive script.

Lutz Güllner
Head of Unit

Encl.: released documents