



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate A - Resources, Information and Policy Coordination
Transparency and Evaluation
The Head of Unit

Brussels,
trade(2018)2358015

***By registered letter with acknowledgment
of receipt***

Lora Verheecke
Corporate Europe Observatory
26 Rue d'Edimbourg
1050 Brussels
Belgium

Advance copy by email:

ask+request-5298-4ed9e9ca@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2018/1804

Dear Ms Verheecke,

I refer to your email of 27 March 2018 in which you make a request for access to documents under Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001"), registered on the same day under the reference GestDem No 2018/1804.

You request access to "*all communication, including emails, and documents (agenda, minutes, list of participants, etc) related to the meeting between Christian Burgsmüller and TABC on 7th February 2018.*".

We have identified the following documents that fall under the scope of your request:

- An email on 19 January 2018 from Dr Ignasi Guardans, Partner at K&L Gates to the Commissioner Cecilia Malmström in relation to his appointment as acting TABC Director-Europe. Press release from TABC dated 17 January 2018 is attached to this document (Ares(2018)346478 – document 1 and 2);
- A response dated 23 January 2018 from the Commissioner Malmström Cabinet to Dr Ignasi Guardans of K&L Gates offering a meeting with Cabinet member

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.

Christian Burgsmüller instead of Commissioner Malmström (Ares(2018)390681–document 3);

- An exchange of emails between Dr Ignasi Guardans of K&L Gates and the Cabinet of the Commissioner Malmström confirming the meeting date of 7 February 2018 (Ares(2018)1941354 – Document 4)
- A report of the meeting held on 7 February 2018 between Dr Ignasi Guardans and Cabinet member Christian Burgsmüller (Ares(2018)2099566 – Document 5)

I am glad to inform you that access can be granted to the content of these documents. However, some personal data have been withheld in accordance with Article 4(1)(b) of Regulation 1049/2001. The legal reasoning underlying the protection of these personal data is provided below.

In line with the Commission's commitment to ensure transparency and accountability², the names of the Members of Cabinet are disclosed. Copies of the accessible documents are enclosed.

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 data³.

Article 2(a) of Regulation 45/2001 provides that “‘personal data’ shall mean any information relating to an identified or identifiable natural person [...]”. In this respect, the jurisprudence of the EU Courts has clarified that activities of a professional nature may fall within the notion of ‘private life’⁴ and that “surnames and forenames may be regarded as personal data”⁵, including names of the staff of the institutions⁶.

² See Commission decisions C(2014) 9051 and C(2014) 9048 of 25 November 2014.

³ OJ L 8, 12.1.2001, p. 1. 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” (see 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).

⁴ 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.

⁵ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

⁶ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

In accordance with Article 8(b) of Regulation 45/2001 personal data may 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"*⁷. I consider on the basis of your application, that these conditions have not been met. Therefore, in order to ensure the protection of the privacy and integrity of the individuals concerned, the personal data in question cannot be transferred.

In case you would disagree with the assessment provided above, 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-B-4
BERL 5/282
B-1049 Bruxelles

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

Yours sincerely,

[e-signed]

Delphine Sallard

⁷ The Court of Justice has clarified that *"it is for the person applying for access to establish the necessity of transferring that data"* (C-127/13 P, paragraph 107; see also judgment in C-28/08 P *Commission v Bavarian Lager*, EU:C:2010:378, paragraph 77).