



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate B- Services and Investment, Intellectual Property and Public Procurement
Services
The Head of Unit

Brussels,
Trade(2018)3413281

By registered letter with acknowledgment of receipt

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

Advance copy by email :
ask+request-5538-6334bbef@asktheeu.org

Subject: Your application for access to documents – Ref. GestDem N° 2018/2586

Dear Ms Verheecke,

I refer to your e-mail dated 07/05/2018 in which you make a request for access to documents in accordance with Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001"), registered on 08/05/2018 under the above mentioned reference number.

We would like to apologise for the delay in processing your request, which is due to a large number of access to documents requests being dealt with by DG TRADE.

1. SCOPE OF YOUR REQUEST

In your application you request access to:

- *"a list of meetings that Commissioner Malmström, members of her cabinet or representatives of DG Trade had between March 2013 and today insofar as these meetings related to e-commerce in the EU-Japan trade deal;*
- *minutes and any other reports of these meetings;*
- *all correspondence, including emails, (from March 2013 till today) between the parties on the topic stated above";*

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.

You further clarified on 24/05/2018 that in relation to points 1 (list of meetings) and 3 (correspondence) of your request, you refer to stakeholders/ interest groups such as NGOs, trade unions, law firms, think tanks, trade federations, companies, etc.

We have identified 7 meetings and overall 13 documents corresponding to your request. A list of these documents is enclosed in Annex I to this reply.

2. ASSESSMENT AND CONCLUSION UNDER REGULATION 1049/2001

In accordance with settled case law², when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to 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 pose a “*reasonably foreseeable and not purely hypothetical*” risk of undermining the protection of the interest covered by the exception. Third, if it 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*”.³

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents,⁴ “*the exceptions to that right [...] must be interpreted and applied strictly*”.⁵

Having carefully examined the documents identified above in light of the applicable legal framework, I am pleased to fully release documents 5 and 13.

As regards documents, 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12, while we can partially release them, please note that personal data were removed in all of these documents pursuant to Article 4.1(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001 (“Regulation 45/2001”).⁶ In line with the Commission's commitment to ensure transparency and accountability, the names of the Members of the Cabinet and officials at the level of Director and above are disclosed. For document 4 the name of the Chairman is also disclosed.

Please note furthermore that parts of documents 1, 2, 3, 6, 8, 10, 11 and 12 have been withheld and marked “out of scope” as they concern topics that are unrelated to the subject matter of your application.

² 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.

³ *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.

⁴ See Regulation (EC) No 1049/2001, recital (4).

⁵ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

⁶ 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 processing of personal data by the Community institutions and bodies and of the free movement of such data, OJ L 8, 12.1.2001, p. 1.

The reasons justifying the application of the exception related to personal data are set out below in Section 2.1.

2.1. Protection of privacy and integrity of the individual

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 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.”⁷

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’⁸ and that “surnames and forenames may be regarded as personal data”⁹, including names of the staff of the institutions¹⁰.

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”. The Court of Justice has clarified that “it is for the person applying for access to establish the necessity of transferring that data.”¹¹

Documents 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 contain names and other personal information that allows the identification of natural persons. In document 4 a signature has also been removed to avoid the risk of forgery.

I note that you have not established the necessity of having these 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.

⁷ 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

⁸ 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.

⁹ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU :C :2010 :378, paragraph 68.

¹⁰ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

¹¹ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 107 and Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU :C :2010 :378, paragraph 77.

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 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,



Christophe KIENER

Annexes: - List of the identified documents related to Gestdem 2018/ 2586
 - Redacted documents