



EUROPEAN COMMISSION
Directorate-General for Trade

Directorate F - WTO, Legal Affairs and Trade in Goods
Dispute Settlement and Legal Aspects of Trade Policy

Brussels

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

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Advance copy by email:
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dccf8554@asktheeu.org

Subject: Your application for access to documents – Ref GestDem 2018/6655

Dear Ms Lora Verheecke,

I refer to your request of 11 December 2018 for access to documents under Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001"), as registered under the above mentioned reference number registered on 11 December 2018.

1. SCOPE OF YOUR REQUEST

In your application you request access to: *"documents which contain the following information: 1) a list of meetings between any official from DG Trade, with the European Federation for Investment Law and Arbitration (EFILA), or one of its members, in 2018; 2) minutes and other reports of these meetings in 2018; 3) a copy of all the correspondence (letters, emails, etc) between EFILA representatives or one of EFILA member and any representative from DG Trade in 2018."*

We have identified 3 documents corresponding to your request:

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) email exchange dated 11/10/2018: invitation from a member of EFILA addressed to an official from the Directorate General for Trade to deliver the keynote speech at the EFILA Annual Conference on 31 January 2019 in London;
- 2) email exchange dated 07/11/2018: follow-up correspondence between a member of EFILA and an official from the Directorate General for Trade to agree on the title of the keynote speech at the EFILA Annual Conference on 31 January 2019 in London; and
- 3) email exchange dated 03/12/2018: follow-up correspondence between a member of EFILA and an official from the Directorate General for Trade on a preparation call for the EFILA Annual Conference on 31 January 2019 in London.

2. CONTEXT AND ASSESSMENT

The European Federation for Investment Law and Arbitration (EFILA) has organised its 4th Annual Conference on 31 January 2019 in London on the following topic: "The EU and the future of international investment law and arbitration". EFILA has invited an official from the Directorate General for Trade to give the keynote speech at the event.

The identified documents attached to this letter are three emails exchanged in the context of the preparation for the above-mentioned Annual Conference and keynote speech.

The programme of the Annual Conference is available online at <https://efila.org/wp-content/uploads/2019/01/EFILA-Annual-Conference-2019-Program-16-1-2019a.pdf>.

3. CONCLUSIONS UNDER REGULATION 1049/2001

In reply to your request, and in view of the applicable legal framework, I am pleased to grant you access to the documents in annex. The content of the documents that falls within the scope of your request is made fully accessible, while those parts of documents that do not fall within the scope of your request have been removed from the documents.

Additionally, 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.

Pursuant to Article 4(1)(b) of Regulation (EC) No 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 applicable legislation in this field is Regulation (EC) No 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/EC² ('Regulation 2018/1725').

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data "*means any information relating to an identified or identifiable natural person [...]*". The Court of Justice has specified 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 Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.⁴

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶

Pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if "*[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests*". Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

² Official Journal L 205 of 21.11.2018, p. 39.

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

⁴ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, ECLI:EU:T:2018:560.

⁵ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

⁶ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

In your application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

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

In case you disagree with the assessment contained in this reply 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, Document Management & Access to Documents unit SG-C-1
BERL 5/282
BE - 1049 Bruxelles

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

Yours sincerely,

Martin LUKAS

Encl.:

- Documents