



EUROPEAN COMMISSION  
Directorate-General for Trade

The Director-General

Brussels,  
DG/JLD/MM/alf (2019) 2063469

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

Mr. Hans Wetzels  
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6371 LZ Landgraaf  
The Netherlands

***Advance copy by email:***  
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**Subject: Your application for access to documents –  
Ref GestDem No 2019/686**

Dear Mr Wetzels,

I refer to your email of 5 February 2019 in which you request access to documents under Regulation (EC) No 1049/2001<sup>1</sup> ("Regulation 1049/2001"). Your request has been registered under the reference number GestDem No 2019/686.

### **1. SCOPE OF YOUR REQUEST**

You requested access to:

*- Any study, impact assessment, forecast, paper or other document authored or received by DG Trade-officials (including the Commissioner and the Cabinet) in which Jair Bolsonaro or Paulo Guedes were mentioned or discussed between July 2018 and January 2019.*

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<sup>1</sup> 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.

- Any study, impact assessment, forecast, paper or other document authored or received by DG Trade-officials (including the Commissioner and the Cabinet) in which the EU-Mercosur trade agreement was mentioned or discussed between July 2018 and January 2019.

- Any study, impact assessment, forecast, paper or other document authored or received by DG Trade-officials (including the Commissioner and the Cabinet) in which economic and/or market developments in Brazil were mentioned or discussed between July 2018 and January 2019.

- All correspondence (including emails) received or sent by DG Trade-officials (including the Commissioner and the Cabinet) concerning or mentioning Jair Bolsonaro or Paulo Guedes between July 2018 and January 2019.

- All correspondence (including emails) received or sent by DG Trade-officials (including the Commissioner and the Cabinet) concerning or mentioning the EU-Mercosur trade agreement between July 2018 and January 2019.

- All correspondence (including emails) received or sent by DG Trade-officials (including the Commissioner and the Cabinet) concerning or mentioning economic and/or market developments in Brazil between July 2018 and January 2019.

- A list of meetings including detailed minutes and any other reports of such meetings between or attended by DG Trade-officials (including the Commissioner and his Cabinet members) concerning or mentioning Jair Bolsonaro, Paulo Guedes, the EU-Mercosur trade agreement or economic and/or market developments in Brazil between July 2018 and January 2019.

*Should my request be denied wholly or partially, please explain the denial or all deletions referring to specific exemptions in the regulation. Also I expect the partial release of documents, in case of partial exemption according to article 4.6.*

On 14 February 2019, you provided an additional clarification, which helped us to reduce the scope of your original request to a more manageable number of documents.

**You asked us to prioritize studies, impact assessments, forecasts, papers or documents received by DG Trade-officials, correspondence (including emails) and detailed minutes of meetings (between or attended by DG Trade-officials including the Commissioner and his Cabinet members) concerning or mentioning Jair Bolsonaro, Paulo Guedes and future market developments/market opportunities for European companies in Brazil between July 2018 and January 2019.**

I apologise again for the delay in preparing the reply to your request.

## 2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law, 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.<sup>2</sup>

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 would undermine the protection of the interest covered by the exception. Third, the risk of that interest being undermined must be "*reasonably foreseeable and not purely hypothetical*".<sup>3</sup> If the institution 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*".<sup>4</sup>

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents<sup>5</sup>, "*the exceptions to that right [...] must be interpreted and applied strictly*"<sup>6</sup>.

In reply to your request the Commission has identified 23 documents (see list attached).

Having carefully examined your request in light of the applicable framework, I have the pleasure to inform you that full access can be granted to documents from 19 to 23. Please note that document 23 is publicly available on the following website:

<https://www.crisisgroup.org/global/watch-list-2019>.

Partial access can be granted to twelve documents 1, 2, 3, 4, 5, 8, 9, 11, 13, 15, 17, 18. Some parts of the documents have not been disclosed if their content has been considered out of scope, or if the disclosure of their content would undermine the protection of international relations. In addition, personal data have been redacted from all those documents, pursuant to Article 4(1)(b) of Regulation 1049/2001.

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<sup>2</sup> 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.

<sup>3</sup> *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.

<sup>4</sup> *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.

<sup>5</sup> Regulation (EC) No 1049/2001, recital (4).

<sup>6</sup> Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

I regret to inform you that from the list of documents no disclosure can be made of documents 6, 7, 10, 12, 14 and 16 pursuant to Article 4(1)(a) third indent of Regulation 1049/2001 as the documents contain sensitive information the disclosure of which might undermine the protection of international relations (see legal reasoning below). These documents contain a political assessment of the position of the Brazilian administration which should not be revealed because of the protection of international relations exception pursuant to Article 4(1)(a). Document 6 contains an assessment of the composition of the new Brazilian Congress. Document 7 contains a political assessment of the position of the new Brazilian Minister of Foreign Affairs, Mr. E. Araújo. Document 10 is another political assessment of the positioning of the Congress vis-à-vis President-elect Bolsonaro. The contents of Document 12 have been assessed as being largely out of scope of the request as they concern mostly countries other than Brazil, i.e. Venezuela, Honduras, Chile. The part referring to Brazil contains a political assessment the disclosure of which might undermine the protection of international relations. Document 14 is an assessment of the nomination of Mr. Moro as Minister, the disclosure of which might undermine international relations. Document 16 is an assessment of the political campaign which also falls under the protection of international relations exception.

Copies of the accessible documents are enclosed.

## **2.1 Protection of the privacy and the integrity of the individual (documents 1-18)**

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/EC7 ('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.<sup>8</sup> Please note in this

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<sup>7</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>8</sup> 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.

respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.<sup>9</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>10</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable<sup>11</sup>.

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.

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.

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<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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.

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.

I take this opportunity to remind you that the documents provided in the attachment to this letter may not be copied or reproduced for commercial purposes without prior consultation with the European Commission.

## **2.2 Protection of the public interest as regards to international relations (documents 1-18)**

Article 4(1)(a) third indent of Regulation 1049/2001 provides that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (a) the public interest as regards: [...] international relations".

According to settled case-law, "*the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation*".<sup>12</sup> In this context, the Court of Justice of the EU has acknowledged that the institutions enjoy "*a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest*".<sup>13</sup>

The General Court found that "*it is possible that the disclosure of European Union positions in international negotiations could damage the protection of the public interest as regards international relations*" and "*have a negative effect on the negotiating position of the European Union*" as well as "*reveal, indirectly, those of other parties to the negotiations*".<sup>14</sup> Moreover, "*the positions taken by the Union are, by definition, subject to change depending on the course of those negotiations and on concessions and compromises made in that context by the various stakeholders. The formulation of negotiating positions may involve a number of tactical considerations on the part of the negotiators, including the Union itself. In that context, it cannot be precluded that disclosure by the Union, to the public, of its own negotiating positions, when the*

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<sup>12</sup> Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

<sup>13</sup> Judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

<sup>14</sup> Judgment in *Sophie in 't Veld v Commission*, T-301/10, EU:T:2013:135, paragraphs 123-125.

*negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating capacity of the Union".<sup>15</sup>*

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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 (SG.C.1)  
BERL 7/76  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Jean-Luc DEMARTY

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<sup>15</sup> *Id.*, paragraph 125.