



EUROPEAN COMMISSION

Directorate-General for Trade

The Director General

- 6 AOUT 2019

Brussels,
TRADE/SW/AN/alf (2019) 5650367

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

Nicolas Roux
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47 Avenue Pasteur
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France

Advance copy by email:
ask+request-7049-f3648f28@askthecu.org

Subject: Your application for access to documents – Ref GestDem 2019/3840

Dear Mr Roux,

I refer to your request of 3 July 2019 for access to documents under Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001") and hereinafter registered as GestDem 2019/3840.

Please accept our apologies for the delay in answering your request, which is mainly due to the high number of requests for access to documents being processed at the same time by the Directorate-General for Trade (hereinafter 'DG TRADE').

1. SCOPE OF YOUR REQUEST

Your request concerns the following:

*EU- Mercosur directives for the negotiation by the Commission of an association agreement
between the parties*

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.

2. ASSESSMENT AND CONCLUSIONS 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 poses a “*reasonably foreseeable and not purely hypothetical*” risk of undermining the protection of the interest covered by the exception. Third, 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*”³.

On 28/06/2019 the EU and Mercosur reached a political agreement. I regret to inform you that access is not granted to this document, as the disclosure is prevented by the exception set out in Article 4(1)(a) third indent of Regulation 1049/2001 (protection of the public interest as regards international relations). The reasons justifying the application of this exception are set out below in section 2.1.

2.1 Protection of the public interest as regards international relations

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: 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*”.⁴ In this context, the Court of Justice 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*”⁵.

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*

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

⁵ Judgment in *Council v Sophie in’t Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

European Union" as well as "reveal, indirectly, those of other parties to the negotiations".⁶ 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 negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating capacity of the Union".⁷

The political agreement reached by the EU and Mercosur on 28/06/2019 has not been signed or ratified yet. Under these conditions the European Commission and the Council Secretariat decided not to disclose this document on the basis of the Article 4(1)(a) of Regulation 1049/2001.

The abovementioned document must, therefore, remain protected.

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.C1)
BERL 7/76
1049 Bruxelles

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

Yours sincerely,



p.o. Sabine WEYAND

⁶ Judgment in *Sophie in't Veld v Commission*, T-301/10, EU:T:2013:135, paragraphs 123-125.

⁷ *Id.*, paragraph 125.