



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

The Director-General

Brussels

FISMA.C.1/JPR/rm/Ares (2020) 5689764

Ms Vicky Cann

CEO

Rue d'Edimbourg 26

1050 Brussels

*By registered letter with acknowledgement of
receipt*

Email: ask+request-8529-5e119b79@asktheeu.org

**Subject: Your applications for access to documents (our ref. GESTDEM
2020/5282)**

Dear Ms Cann,

We refer to your request for access to documents, registered under the above-mentioned reference number.

Your application concerns “a list of all lobby meetings (including phone calls, conference calls etc) held since 1 January 2019 where the EU’s proposal for public Country by Country Reporting was discussed. The list should include the names of the individuals and organisations participating; the date; the agenda; and any minutes / notes produced”. You would additionally like to receive “any emails or other correspondence related to the EU’s proposal for public Country by Country Reporting received or sent since 1 January 2019”. We have determined that your request relates to the Commission proposal of April 2016 with reference COM (2016)0198.

After having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, you will find in Annex part of the documents requested. Access to certain of the documents cannot be granted because they fall within the categories of exceptions in Article 4(3) (protection of the decision-making process) of this Regulation.

Article 4(3) of Regulation 1049/2001 provides that:

“3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.”

Pursuant to settled case law, the above-mentioned exception may be applied where disclosure of preparatory documents would result in a serious, non-hypothetical and objectively justified risk of self-censorship¹.

The General Court acknowledged that the Commission must [...] be placed in a position to decide [...] wholly independently, in the general interest and free from any external pressure or third-party influence [...] on the policy initiatives to be proposed. [...] This is all the more important in order to preserve the essence of the power of initiative conferred on the Commission by the Treaties and its capacity to assess, wholly independently, the appropriateness of a policy proposal. More specifically, it is important to protect that power of initiative from any influences exerted by public or private interests which would attempt, outside of organised consultations, to compel the Commission to adopt, amend or abandon a policy initiative and which would thus prolong or complicate the discussion taking place within that institution².

We understand that some of the documents you are requesting access to relate to the legislative process that will lead to the final adoption of the Directive by the EU in the future. The ordinary legislative procedure is still ongoing for this proposal, under the reference 2016/0107(COD). Many documents are inextricably linked to this procedure as regards the involvement of the Council, the European Parliament and other public institutions or bodies. Disclosure of relating documents would deprive the Commission of the ability to avoid undue external constraints and pressure in exercising its prerogatives during these processes.

In addition, we understand that some of the documents requested relate to the decision-making process for the adoption of the proposal by the College of Commissioners, which took place in 2016. In the framework of the exercise of its independent role as recognised by the EU Treaty, the Commission services and the college of Commissioners need to be able to explore different options and proposals in the course of the decision-making process.

The exception laid down in Article 4(3) of Regulation 1049/2001 applies to both situations unless there is an overriding public interest for the disclosure of the documents. However, to the best of my knowledge, you have not expressed such an interest in your request.

Furthermore, the possibility of granting partial access to the requested documents has been taken into consideration in accordance with Article 4(6) of Regulation (EC) No

1 Judgment of 18 December 2008, *Muñiz v. Commission*, T-144/05, EU:T:2008:596, paragraphs 89 and 90. (Although in this case the General Court, then Court of First Instance, found that the Commission's contentions were not corroborated by other evidence and therefore did not establish that its concerns were objectively justified). See also judgment of 10 January 2013, *My Travel v. Commission*, T-403/05, EU:T:2008:316, paragraph 52.

2 Judgment of 13 November 2015, *ClientEarth v. Commission*, T-424/14 and T-425/14, EU:T:2015:848, paragraphs 94 and 95.

1049/2001. I have determined that it would be possible to provide you with documents requested in relation to meetings held with stakeholders since 1 January 2019.

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 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 individual with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data³. I have determined that, having regards to the types of documents mentioned in your request, access could be granted to the minutes of meetings between officials of the Commission and stakeholders. The full list of meetings that took place since 1 January 2019, as well as the corresponding minutes where available, are provided in Annex. Please note that as the minutes of meetings hosted by the Commission generally contain personal data, part of them have been redacted pursuant to Regulation (EC) No 45/2001⁴.

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
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/243
B-1049 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)

John BERRIGAN

Enclosure: List of meetings held with stakeholders - COM (2016)0198
Meeting minutes (redacted)

³ Official Journal L 8 of 12.1.2001, p. 1

⁴ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055