Subject: Your application for access to documents – Ref GestDem 2021/2824

Dear Madam,

I refer to your application dated 28/04/2021, in which you make a request for access to documents under Regulation (EC) No 1049/2001 (‘Regulation 1049/2001’), registered on 29/04/2021 under the above mentioned reference number.

1. **SCOPE OF YOUR REQUEST**

In your request, you asked for access to all documents related to the following meetings:

From Director-General Weyand:

- 03/10/19 American Chamber of Commerce to the European Union (AmCham EU) - EU-US Trade;
- 27/06/2019 McLarty Associates – EU-US Relations;

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31/10/2019 DIGITALEUROPE (DE) - Digital issues, US-China trade;
31/03/2020 Centre for European Reform (CER) - EU’s trade policy fit in the 21st century.

From former European Commissioner Hogan:

• 11/12/19 - IBM Corporation (IBM) Presentation of IBM’s point of view on digital trade and the priorities of the new Commission;
• 16/10/2019 - Airbnb Ireland UC RURAL TOURISM;
• 23/01/2020 - Apple Inc. - Trade Issues;
• 22/01/2020 - VMware International Unlimited Company - Trade Issues;
• 21/01/2020 - Cisco Systems Inc. (Cisco) - Trade Issues;
• 04/02/20 - DIGITALEUROPE (DE) - Trade Issues;
• 29/04/2020 - American Chamber of Commerce to the European Union (AmCham EU) - Trade issues;
• 05/03/20 - The Information Technology Industry Council (ITI) - Trade Issues;
• 05/03/20 - The Information Technology Industry Council (ITI) - Trade Issues;
• 07/05/20 Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e. V. (Bitkom) Digital Trade; Covid -19;
• 30/06/2020 - Microsoft Corporation - Trade issues.

In your application you also specify the type of documents you seek access to:

• all agendas for each of these meetings;
• any record of the aforementioned meetings; this may include, but not necessarily be limited to, minutes of the meetings, verbatim reports of the meetings, transcripts etc, that would provide a record of the proceedings of the meetings;
• all documents prepared or received for the purpose of these meetings and/or distributed among the attendees before or during the course of these meetings (such as – but not limited to – handouts, leaflets, briefings or background notes);
• all correspondence sent or received in preparation for these meetings and/or in order to arrange these meetings, including all attachments;
• all documents prepared or received with regards to and/or as a follow up to these meetings; and
• all correspondence sent or received with regards to and/or as a follow up to these meetings, including all attachments.

2. ASSESSMENT AND CONCLUSION UNDER REGULATION 1049/2001

In accordance with settled case law\(^2\), when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions

\(^2\) 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.
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 it takes the view that disclosure would undermine the protection of any of the interests defined under Article 4(2) and Article 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 documents4, "the exceptions to that right […] must be interpreted and applied strictly"5.

In reply to your request, I can inform you that we have identified **17 documents** that fall within the scope of your request. The identified documents are listed for ease of reference in Annex I. For each of the documents the Annex provides a description and indicates whether parts are withheld on which ground pursuant to Regulation 1049/2001.

Having examined the requested documents under the applicable legal framework, I am pleased to grant you partial access to all documents where only names and other personal data have been redacted pursuant to article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 2018/1725. Hence, the main content of these documents relevant to your request is accessible.

In documents 5 and 8, in addition to personal data, further information was redacted as it is covered 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 the exceptions are set out below. Copies of the accessible documents are enclosed to this letter.

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3 **Id.**, paragraphs 37-43. See also judgment in Council v Sophie in ’t Veld, C-350/12 P, EU:C:2014:2039, paragraphs 52-64.

4 See Regulation 1049/2001, recital (4).

2.1 PROTECTION OF THE PUBLIC INTEREST AS REGARDS INTERNATIONAL RELATIONS (DOCUMENTS 5 AND 8)

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 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’. 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’.

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’. 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’.

Disclosure of the documents requested by you would undermine the protection of the public interest as regards international relations, because they contain sensitive Commission assessments of the trade policy positions and decisions of a third country, and of the bilateral trade relations with that third country. Some parts of these documents contain internal Commission deliberations that serve to inform Commission staff of the latest state of play of bilateral trade relations. Other parts of the document, some of which are equally sensitive, allow Commission staff to engage in a policy debate with a specific target audience with the objective of supporting the Commission’s policy-making process. None of those sensitive elements are meant to be disclosed publicly. The public disclosure of such specific and sensitive information could risk undermining the

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6 Judgment in Sison v Council, C-266/05 P, EU:C:2007:75, paragraph 35.
9.Id., paragraph 125.
dialogue, trust and relations with the third country concerned, and would therefore undermine the protection of the public interest as regards international relations. In fact, the direct or indirect disclosure of such information could reveal the third country’s as well as the EU’s trade strategies and, consequently, have an adverse impact on the ongoing and future relations with this country. Therefore, such disclosure is likely to harm the mutual trust between both parties and thus undermine our relations.

2.2 PROTECTION OF THE PRIVACY AND INTEGRITY OF THE INDIVIDUAL (DOCUMENTS 1 - 17)

Pursuant to Article 4(1)(b) of Regulation 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/EC10 (‘Regulation 2018/1725’).

All 17 documents contain personal information, such as names, e-mail addresses, telephone numbers that allow the identification of natural persons, as well as other personal information.

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.11 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.12

In its judgment in Case C-28/08 P (Bavarian Lager)13, 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.14

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14 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
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 documents 1-19, 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.

However, in line with the Commission’s commitment to ensure transparency and accountability, the names of the Members of Cabinet and the names of the senior management of the Commission are disclosed.
3. MEANS OF REDRESS

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:

Secretary-General
European Commission
Transparency, Document Management and Access to Documents unit SG-C.1
BERL 7/076
Rue de la Loi 200/Wetstraat 200
1049 Brussels

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

Yours sincerely,

Sabine WEYAND

Enclosures: Annex I: list of identified documents
17 Documents disclosed /partially disclosed