



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels
TRADE/SW/D1 (2022)976301

Mr Mark Scott
Rue de la Loi 62
1040 Brussels

***By email only – with request for email
acknowledgment of receipt:***
ask+request-10303-6722eba4@asktheeu.org

Subject: Your application for access to documents – GestDem 2021/7454

Dear Mr Scott,

I refer to your application dated 30 November 2021, in which you make a request for access to documents under Regulation (EC) No 1049/2001¹ ('Regulation 1049/2001'), registered on the same date under the above mentioned GestDem registration number. I apologise for the delay in our response, which mainly results from the need to consult with other Commission services that received similar requests on your behalf.

1. SCOPE OF YOUR REQUEST

In your request you ask for access to the following:

'All communication related to the developments connected to the EU-US Trade and Tech Council, including emails and other communication with the US Commerce Department, State Department, United States Trade Representative and White House (National Security Council) between June, 2021 and November 2021.'

Please note that the wide scope of your request, which you directed in the form of individual applications to different Directorates-General, covers areas that also fall under the responsibility of other Directorates-General. Hence, individual parts of your requests are handled by the respective Directorates-General in charge of the related subject-matter and – ultimately – on the basis of their lead involvement in the different TTC working groups.

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 (Official Journal OJ L 145, 31.5.2001, p. 43).

This reply relates only to the documents for which the Directorate-General for Trade (DG Trade) is in the lead on the subject matter. You have received or will receive complementary replies from the other respective Directorates-General in charge in due course, corresponding to their remit.

On the basis of this scope, we have identified and assessed a number of documents that are listed and numbered in the Annex to this reply letter.

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 1049/2001.²

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. In this context, the risk of that interest being undermined must be *'reasonably foreseeable and not purely hypothetical'*.³ Third, if the institution takes the view that disclosure would undermine the protection of any of the interests defined under Article 4(2) and (3) of Regulation 1049/2001, the institution is required *'to ascertain whether there is any overriding public interest justifying disclosure'*.⁴

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents⁵, *'the exceptions to that right [...] must be interpreted and applied strictly'*.⁶

Having carefully examined each of the documents falling in the scope of your request, we inform you that **documents 1 and 3 to 7** cannot be disclosed, as their disclosure would undermine the protection the EU's international relations and the protection of personal data. **Documents 2 and 8** can be disclosed partially (with only personal data withheld and redacted), as their full disclosure would undermine the protection of privacy. The non-disclosures are covered respectively by the exceptions set out in Article 4(1)(a), third indent (protection of international relations) and in Article 4(1)(b) (protection of personal data) of Regulation 1049/2001. The reasons justifying the application of the exceptions are set out below in Sections 1.1 and 1.2. In addition, **document 2** contains parts out of the scope of your request; these parts are also indicated in the version disclosed to you.

Furthermore, I would like to draw your attention to the 'Futurium' website⁷, which the Commission has launched and is dedicated to the Trade and Technology Council. 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, point 35.

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

⁴ *Id.*, points 37-43. See also judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, points 52 and 64.

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

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

⁷ <https://futurium.ec.europa.eu/en/EU-US-TTC>

website serves as one-stop-shop to collect stakeholder input relating to the TTC, and we have encouraged constituencies and stakeholder organisations to provide their input on the specific working groups via this channel. The Futurium website is updated on a rolling basis with new information conveyed by stakeholders, updates on the stakeholder consultations that the Commission organizes to identify priorities in the work of each of the different TTC Working Groups, joint statements⁸, and information and reports related to past and upcoming TTC events. The Commission considers that in order to make the Trade and Technology Council a success, an inclusive and transparent approach to stakeholders is a high priority. We therefore warmly invite you to consult the Futurium website for further information.

2.1. PROTECTION OF THE PUBLIC INTEREST AS REGARDS INTERNATIONAL RELATIONS (DOCUMENTS 1 AND 3 TO 7)

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'*⁹. 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'*¹⁰.

Documents 1 and 3 to 7 contain detailed and sensitive information related to the discussions in the framework of the Trade and Technology Council that was shared in confidence between the Commission and its US interlocutors.

The documents furthermore contain detailed information that would reveal publicly how the US government structures internally the organisation of the Trade and Technology Council and its ministerial meetings. Against this background, we consider that the public disclosure of the listed documents would negatively affect both the ability of the European Commission to establish and maintain efficient and trust-based relations with the United States and to effectively defend EU interests in the context of the ongoing discussions within the Trade and Technology Council.

We consider that risk as being reasonably foreseeable and non-hypothetical, since the documents, if released, would reveal a third country's (notably the US) approaches and preferences, thus harming the mutual trust in the international relationship. In sum, we

⁸ For example, the EU-US Trade and Technology Council Inaugural Joint Statement: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_4951

⁹ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, point 35.

¹⁰ Judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, point 63.

consider that the confidentiality needs require a coherent application of the international relations exceptions of Article 4(1)(a), third indent to the entirety of **documents 1 and 3 to 7**, thus not allowing any partial access to the before mentioned documents.

2.2. PROTECTION OF THE PRIVACY AND INTEGRITY OF THE INDIVIDUAL (PERSONAL DATA – ALL DOCUMENTS)

With regard to **documents 2 and 8** referred to above, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management (applies additionally only to document 2);
- the names of natural persons; and
- other information relating to an identified or identifiable natural persons.

The same applies to **documents 1 and 3 to 7**, insofar as their release is not already or not only prevented by the international relations exception (cf. above point 2.1) as they also contain personal data as indicated above.

Under 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 currently applicable legislation in this field is Regulation (EU) 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/EC¹¹ ('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 indicated 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.¹² Names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are thus to be considered personal data.¹³

Article 9(1)(b) of Regulation 2018/1725 does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

¹¹ OJ L 205, 21.11.2018, p. 39.

¹² See judgment in *Nowak*, C-434/16, EU:T:2018:560, points 33 to 35.

¹³ Judgment in *Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, T-39/17, EU:T:2018:560, points 43 and 44.

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

2.3. DISCLAIMER

Please kindly also pay attention to the following: you may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf, based on Commission Decision 2011/833/EU of 12 December 2011 on the re-use of Commission documents (OJ L 330, 14.12.2011, p. 39-42). You may reuse the documents disclosed free of charge for non-commercial and commercial purposes, provided that the source is acknowledged, and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume any liability stemming from the reuse.

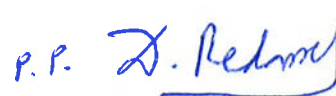
3. POSSIBILITY OF A CONFIRMATORY APPLICATION

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 Secretariat-General of the Commission, either by email to sg-acc-doc@ec.europa.eu, or by letter to the following address:

European Commission
Secretariat-General
'Transparency, Document Management & Access to Documents' (unit SG C.1)
BERL 7/76
Rue de la Loi 200/Wetstraat 200
1049 Brussels
Belgium

Yours sincerely,



Sabine WEYAND

