Dear Ms Eberhardt,

I refer to your request for access to documents under Regulation (EC) No. 1049/2001 ("Regulation 1049/2001") dated 7 June 2017 and registered on the same date under the above-mentioned reference number.

1. **SCOPE OF YOUR REQUEST**

In your application you seek access to the following documents:

"*Any documents relating to a potential model bilateral investment treaty (BIT) for EU member states*, which is being developed with involvement of the European Commission, including:

- draft texts of the model BIT
- minutes and agendas of meetings of DG Trade officials (including the Commissioner and her cabinet), both within the Commission and with EU member states, in which such a model BIT was discussed
- correspondence (such as e-mails and letters) of DG Trade officials (including the Commissioner and her cabinet) both within the Commission and with EU member states, in which such a model BIT was addressed since January 2016" (emphasis added).

I regret to inform you that no documents corresponding to the description given in your application were identified. Indeed, as specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the

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possession of the institution. Given that no such documents have been identified, DG TRADE is not in a position to share with you any documents under this request.

For the sake of clarity, please be informed that the European Commission is not developing any "potential model bilateral investment treaty (BIT) for EU Member States". Pursuant to Regulation (EU) No. 1219/2012\(^2\) ("Regulation 1219/2012"), the European Commission can authorise Member States to open formal negotiations to amend or conclude bilateral investment agreements with third countries. The authorisation can only be refused if the opening of such negotiations is, *inter alia*, in conflict with EU law and/or inconsistent with the EU’s principles and objectives for external action (see Article 9 of Regulation 1219/2012). Member States are thus required to include or remove from such negotiations and prospective bilateral investment agreements specific clauses to ensure consistency with the EU’s investment policy or compatibility with EU law. The drafting of these clauses is nonetheless left to Member States. Such drafting does not draw on the basis of any model bilateral investment treaty developed by the Commission but rather on the approach taken by the EU in its investment agreements, where appropriate.

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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  
Secretary-General  
Transparency unit SG-B-4  
BERL 5/282  
1049 Bruxelles

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

Yours sincerely,

For Jean-Luc DEMARTY, absent,  
Mauro PETRICCIONE  
Deputy Director General