



EUROPEAN COMMISSION
Directorate-General for Trade

The Director General

13 SEP. 2017

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*By registered mail with acknowledgment
of receipt*

Ms Cecilia Olivet
Transnational Institute
De Wittenstraat 25
1052 AK Amsterdam
The Netherlands

Advance copy by email:
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2b680523@asktheeu.org](mailto:ask+request-4417-2b680523@asktheeu.org)

Subject: Your application for access to documents – Ref GestDem No 2017/3744

Dear Ms Olivet,

I refer to your e-mail dated 23 June 2017, 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 reference number.

Please accept our apologies for the delay in replying to your request, which is mainly due to a high number of requests for access to documents being processed at the same time by DG TRADE.

1. SCOPE OF YOUR REQUEST

In your application of 23 June 2017, you requested access to the following documents:

- (a) *The terms of reference of the Framework Contract FPI/PSF/2015-LOT4. CRIS NUMBER 2016/377522 "Proyecto para la implementación del Acuerdo Multipartes entre la Unión Europea y Ecuador (MPTA, according to english acronym)" being implemented by Coronel & Perez abogados and Development Solutions Europe Ltd.*
- (b) *The report(s) that have been produced so far in the context of the Framework Contract FPI/PSF/2015-LOT4. CRIS NUMBER 2016/377522 "Proyecto para la*

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.

implementación del Acuerdo Multipartes entre la Unión Europea y Ecuador (MPTA, according to english acronym)" being implemented by Coronel & Perez abogados and Development Solutions Europe Ltd.

(c) *Minutes of any meetings held with DG Trade were this project was discussed.*

The documents identified are the following:

- The terms of reference of the Framework Contract FPI/PSF/2015-LOT4. CRIS NUMBER 2016/377522 – Implementation of the EU-Ecuador MPTA (**document 1**) –Ares(2016) 4413843;
- The Operational report ("Reporte operativo final") (**document 2**) – Ares(2017) 4089307;
- The Final Report (**document 3**) - Ares(2017) 4207369;
- Minutes of the video-conference of 2 August 2017 (**document 4**) - Ares(2017) 4131412.

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 pose 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 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.

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.

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

⁵ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

Having carefully examined the documents identified above in light of the applicable legal framework, I am pleased to inform you that **partial access is granted to the four above-mentioned documents**. Copies of the accessible documents are enclosed.

In all four documents, personal data have been removed, pursuant to Article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001⁶ ("Regulation 45/2001").

In document 1, in addition to personal data, 2 sentences were redacted pursuant to Article 4(1)(a) third indent of Regulation 1049/2001 concerning the protection of the public interest as regards international relations.

The reasons justifying the application of the exceptions are set out below in Sections 2.1 and 2.2.

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"*⁷. 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"*⁸.

Two sentences have been redacted on pages one and four of document 1 pursuant to Article 4(1)(a) third indent, as they contain comments and opinions as regards the country in question. These opinions were formed in the specific context of this framework contract, as a starting point for the objectives of the assignment of the contractor. The disclosure of these sentences may undermine the public interest as regards international relations of the EU.

⁶ Regulation (EC) No 45/2001 of the European Parliament and the of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1.

⁷ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

⁸ Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

2.2. Protection of privacy and integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where 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 Court of Justice has ruled that “where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data” “the provisions of Regulation 45/2001, of which Articles 8(b) and 18 constitute essential provisions, become applicable in their entirety”⁹.

Article 2(a) of Regulation 45/2001 provides that “‘personal data’ shall mean any information relating to an identified or identifiable natural person [...]”. The Court of Justice has confirmed that “there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of ‘private life’”¹⁰ and that “surnames and forenames may be regarded as personal data”¹¹, including names of the staff of the institutions.¹²

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish “the necessity of having the data transferred” and additionally “if there is no reason to assume that the legitimate interests of the data subjects might be prejudiced”. The Court of Justice has clarified that “it is for the person applying for access to establish the necessity of transferring that data”.¹³

Documents 1, 2, 3 and 4 contain names and other personal information that allows the identification of natural persons.

I note that you have not established the necessity of having these personal data transferred to you. Moreover, it cannot be assumed, on the basis of the information available, that disclosure of such personal data would not prejudice the legitimate interests of the persons concerned. Therefore, we are disclosing the documents requested expunged from these personal data.

However, the names of senior management of the Ecuadorian Government (Minister, State Secretary, Director-General) as well as of the private bodies (CEO, President, Vice-President, Director or equivalent) have been disclosed.

⁹ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 101; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraphs 63 and 64.

¹⁰ Judgment in *Rechnungshof v Rundfunk and Others*, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

¹¹ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

¹² Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

¹³ *Id.*, paragraph 107; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 77.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that documents 2 and 3 are reports carried out by external experts and do not reflect the position of the Commission. Hence, they cannot be quoted as reflecting the Commission's position.

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
BE - 1049 Bruxelles

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

Yours sincerely,



Jean-Luc DEMARTY

Enclosures: Released documents