



**EUROPEAN COMMISSION**

Directorate-General for Trade

The Director General

Brussels,  
trade.dga1.c.1(2018)302135

***By registered letter with acknowledgment  
of receipt***

Mr Max Bank  
LobbyControl  
Am Justizzentrum 7  
50939 Cologne  
Germany

***Advance copy by email:***  
[ask+request-4637-81d84e92@asktheeu.org](mailto:ask+request-4637-81d84e92@asktheeu.org)

**Subject: Your application for access to documents – Ref GestDem No 2017/5322**

Dear Mr Bank,

I refer to your request of 14 September 2017 for access to documents under Regulation (EC) No 1049/2001<sup>1</sup> ("Regulation 1049/2001") which was registered under the above mentioned reference number on 15 September 2017.

We would like to apologise for the delay in replying to your request, which is due to a large number of complex access to documents requests pending simultaneously with DG TRADE.

**1. SCOPE OF YOUR REQUEST**

You requested access to the following documents:

- 1) *"a list of meetings of DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and the European Chemical Industry Council CEFIC in which the Japan-EU Free Trade Agreement (JEFTA) was discussed (between 01 January 2015 and today, i.e. 14 September 2017);*
- 2) *minutes and other reports of these meetings;*
- 3) *all correspondence (including e-mails) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and the European*

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<sup>1</sup> 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.

*Chemical Industry Council CEFIC in which the Japan-EU Free Trade Agreement (JEFTA) was discussed (between January 2015 and today, i.e. 14.09.2017)."*<sup>2</sup>

We have identified five documents that fall within the scope of your request. While we do not have a list of meetings with CEFIC in which the EU-Japan EPA was discussed (point 1 of your request), we do however provide in Annex 1 a list of the documents identified. For each of the documents, the list provides a brief description and indicates the grounds under which parts are withheld pursuant to Regulation 1049/2001. Copies of the documents disclosed are enclosed.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

In accordance with settled case law,<sup>3</sup> 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 poses a "*reasonably foreseeable and not purely hypothetical*" risk of undermining the protection of the interest covered by the exception.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents,<sup>4</sup> "*the exceptions to that right [...] must be interpreted and applied strictly.*"<sup>5</sup>

Having examined the requested documents under the applicable legal framework, I am pleased to grant partial access to documents 1 to 5, and full access to the annex to document 4.

Personal data have been removed in documents 1 to 5, pursuant to article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001 ("Regulation 45/2001")<sup>6</sup>. However, names of senior managers of the Commission (starting from the Director level) and of senior representatives of external organisations, are disclosed.

In document 4, in addition to personal data, other information was redacted in accordance with article 4(1)(a) third indent (protection of the public interest as regards international relations).

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<sup>2</sup> Please note that the agreement to which you refer is called the EU-Japan Economic Partnership Agreement (EPA).

<sup>3</sup> 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.

<sup>4</sup> Regulation (EC) No 1049/2001, recital (4).

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

<sup>6</sup> OJ L 8, 12.1.2001, p. 1.

Please note that parts of documents 1, 2 and 3 that do not relate to the subject-matter of your request have been marked as falling outside the scope of your application.

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

## **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”*.<sup>7</sup> 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”*<sup>8</sup>.

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”*.<sup>9</sup> 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”*.<sup>10</sup>

Certain passages in document 4 have been withheld as they reveal the external stakeholders’ main business concerns, strategic interests, priorities and their internal assessment and input for the negotiations. As such, this information indirectly reveals negotiating priorities, strategic objectives and tactics which the EU could consider pursuing in its trade negotiations.

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

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

<sup>9</sup> Judgment in *Sophie in ’t Veld v Commission*, T-301/10, EU:T:2013:135, paragraphs 123-125.

<sup>10</sup> *Id.*, paragraph 125.

This information was in general meant for internal use as a basis to establish EU positions, strategies, objectives and way forward on specific aspects of the negotiations. Even if the information contained in this document was related to the negotiations with Japan, there is a reasonably foreseeable risk that its public disclosure would undermine and weaken the position of the EU in its ongoing trade negotiations with other third countries. Indeed, the information that the EU's trading partners may collect on the basis of the public disclosure of certain detailed positions, concerns, views and strategies of the Commission and of individual stakeholders may allow them to extract specific concessions from the EU in the context of the ongoing negotiations, thus to the disadvantage of the EU's international relations, and the interests of its citizens, consumers and economic operators. Third countries may also anticipate or deduce certain negotiating position of the EU ahead of the trade talks on the basis of the information contained in the withheld passages.

Indeed, the success of trade negotiations depends to a large extent on the protection of objectives, tactics and fall-back positions of the parties involved. In order to ensure the best possible outcome in the public interest, the EU needs to retain a certain margin of manoeuvre to shape and adjust its tactics, options and positions in function of how the discussions evolve in its trade negotiations. Exposing internal views and considerations would weaken the negotiating capacity of the EU, reduce its margin of manoeuvre and be exploited by our trading partner to obtain specific results, thereby undermining the strategic interests of the EU and the public interest as regards the EU's international relations.

## **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".<sup>11</sup>

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'"<sup>12</sup> and that "surnames and

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<sup>11</sup> 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.

<sup>12</sup> 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.

*forenames may be regarded as personal data*",<sup>13</sup> including names of the staff of the institutions.<sup>14</sup>

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"*.<sup>15</sup>

Documents 1 to 5 contain personal data, such as names and other information that allow the identification of natural persons. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested without including these personal data.

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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 e-mail to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

Jean-Luc DEMARTY

Encl.:

- Annex 1: List of documents
- Documents 1-5

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<sup>13</sup> Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

<sup>14</sup> Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

<sup>15</sup> *Id.*, paragraph 107; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 77.