



**EUROPEAN COMMISSION**  
Directorate-General for Trade

The Director General

Brussels, **19 AUG 2019**

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

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**Subject: Your application for access to documents – Ref GestDem 2019/1846**

Dear Mr Verbeek,

I refer to your request of 18 March 2019 for access to documents under Regulation (EC) No 1049/2001<sup>1</sup> ("Regulation 1049/2001"), as registered under the above mentioned reference number.

**1. SCOPE OF YOUR REQUEST**

With request GestDem 2019/1846, you requested access to documents numbered 61 to 84, from the list submitted to you by the European Commission on 21 September 2018 as part of your previous requests, notably GestDem 2018/4307.

Your requests GestDem 2018/4307, GestDem 2018/5694 and the present request concern:

*- any documents, including briefings, reports, memo's and correspondence (emails, letters, faxes etc.), in which the Indonesia-EU Vision Group was mentioned (between December 2009 and today);*

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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.

- a list of meetings, as well as agendas and minutes or any other reports of such meetings, between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of the Indonesia-EU Visions Group (between December 2009 and today).

After close examination, we have realised that **documents 61, 78, 82, 83 and annex 3 to document 62** all concern the same document. **Documents 67, 72, 77, 80 and annex 2 to document 84** erroneously duplicate **documents 68, 71, 76, 79 and annex 2 to document 62**, respectively. **Document 73** is a draft of a reading guide for a synopsis report, which has already been assessed and released to you as document 40 under your request GestDem 2018/5694.

The present request therefore assesses a total of 17 documents.

For ease of reference, a list of the documents falling within the scope of your request is enclosed in Annex 1. For each of them the list provides a description and indicates whether parts or entire documents are withheld and if so, on which grounds pursuant to Regulation 1049/2001.

Copies of the accessible documents are enclosed.

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

In accordance with settled case law<sup>2</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. Third, if the institution 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*”<sup>3</sup>.

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>.

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<sup>2</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>3</sup> *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.

<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.

Having examined the requested documents under the applicable legal framework, I am pleased to grant you full access to the content of **document 64**. The content of **documents 63, 65, 66, 68, 69, 70, 71, 74, 75, 76, 79, 81, and annex 2 to document 62** is fully accessible with the exception of elements concerning the protection of privacy and integrity of the individual, which were redacted pursuant to Article 4(1)(b) of Regulation 1049/2001.

Partial access is granted to **documents 61, 62 and 84**, where, in addition to personal data, some information was redacted. The redacted information 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).

Parts of **document 81** and **annex 2 to document 62** that do not relate to your request have also been removed, as they fall outside the scope of your request.

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"*.<sup>6</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>7</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>8</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*

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<sup>6</sup> Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

<sup>7</sup> Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

<sup>8</sup> Judgment in *Sophie in't Veld v Commission*, T-301/10, EU:T:2013:135, paragraphs 123-125.

*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>9</sup>*

The EU is currently negotiating a free trade agreement with Indonesia. More generally, under these circumstances it remains important for the EU to retain a certain margin of manoeuvre to shape and adjust its tactics, options and positions in order to safeguard the EU's interests. Furthermore, exposing internal views and considerations would weaken the negotiating capacity of the EU as well as, in general, the protection of the public interest as regards international relations.

Certain passages in **documents 61, 62 and 84** have therefore been withheld as they reveal such views. As such, this information indirectly reveals negotiating priorities, strategic objectives and tactics, which the EU could consider pursuing in its ongoing trade negotiations.

## **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 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/EC ('Regulation 2018/1725').

16 main documents and attachments contain personal information, such as names, e-mail addresses or telephone numbers that allow the identification of natural persons as well as other personal information, like signatures.

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.<sup>10</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>11</sup>, 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<sup>12</sup>.

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<sup>9</sup> *Id.*, paragraph 125.

<sup>10</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

<sup>11</sup> Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

<sup>12</sup> 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 of personal

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.

In your request, 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.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and 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.

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 (Director level and above) are disclosed, as well as the names of individuals who are public figures and are acting in their public capacity (Heads of State, Ministers, Ambassadors, MEPs, etc.).

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Should you disagree with the assessment contained in this reply you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, 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 unit SG-C-1  
BERL 7/76  
1049 Brussels

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



p.o. Sabine WEYAND

Encl.:

- Annex 1: List of documents
- Documents plus annexes including fully and partially released documents