



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels  
TRADE/SW/A.5 (2020)1777898

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*Advance copy by email:*  
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**Subject: Your application for access to documents – Ref GestDem No 2020/0324**

Dear Madam,

I refer to your email of 15 January 2020 in which you make a request for access to documents under Regulation (EC) No 1049/2001 ("Regulation 1049/2001"), and which was registered on the 17 January under the reference GestDem No 2020/0324.

## **1. SCOPE OF YOUR REQUEST**

You request access to the following documents:

*- all communication, including emails, and documents (agenda, minutes, list of participants, etc) related to the meeting between Cristina Rueda Catry and ACEA on 17th December 2019.*

We have identified one document falling within the scope of your request:

Ares(2019)7815937 Report 17 December 2019- Meeting between Cristina Rueda-Catry and ACEA.

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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.

## **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. 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 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”.

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

Having examined the document in light of the applicable legal framework, I would like to inform you that partial access can be granted to it. Some parts have been withheld in accordance with Article 4.1(a), Article 4.1(b), Article 4.2 and Article 4.3 of Regulation 1049/2001. The reasons justifying the application of the exceptions are set out below in Sections 2.1, 2.2 2.3 and 2.4. Section 3 contains an assessment of whether there exists an overriding public interest in the disclosure.

### **2.1. Protection of 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*”. 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”.

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*”. 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” .*

The part of the document redacted on the basis of the Art 4.1(a) third indent presents some positions and strategy options of the trading partner which disclosure would undermine the protection of the public interest as regards international relations. Such disclosure would weaken the EU's capacity to negotiate with this partner and consequently have an adverse impact on the on-going and future relations with the partner. It may also jeopardise the mutual trust between the EU and other trading partners as they may fear that in the future their positions would be exposed and they may as result refrain from engaging with the EU.

## **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 (EC) No 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’).

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. Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.

In its judgment in Case C-28/08 P (Bavarian Lager), 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

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.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your application, 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.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and 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. Protection of commercial interest**

Article 4(2) first indent of Regulation 1049/2001 provides that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] commercial interests of a natural or legal person, including intellectual property [...] unless there is an overriding public interest in disclosure".

Certain parts in this document have been withheld because they reveal specific views, concerns and interests of ACEA regarding the US market. They contain commercial priorities, strategies and concerns this stakeholder has. There is a reasonably foreseeable risk that the public disclosure of this information would harm the commercial interests of ACEA, as it could be exploited by competitors to undermine their competitive positions on the US market.

## **2.4. Protection of the institution's decision-making process**

Article 4(3) first subparagraph, of Regulation 1049/2001 provides that “[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.”

The jurisprudence of the EU Courts has recognized that "the protection of the decision-making process from targeted external pressure may constitute a legitimate ground for restricting access to documents relating to the decision-making process" and that the capacity of its staff to express their opinions freely must be preserved so as to avoid the risk that the disclosure would lead to future self-censorship. As the General Court noted, the result of such self-censorship "*would be that the Commission could no longer benefit from the frankly-expressed and complete views required of its agents and officials and would be deprived of a constructive form of internal criticism, given free of all external constraints and pressures and designed to facilitate the taking of decisions [...]*".

Certain parts of the document have been withheld as they contain information that was exchanged with the Commission in order to provide useful input and support for the EU’s objectives in its relations with the US. Ensuring that the Commission continues to receive access to this information and that the industry engages in open and frank discussions with the Commission, are key elements for the success of the internal and external policies of the EU and its international negotiations. Placing in the public domain specific business related information that companies share with the Commission may prevent the Commission from receiving access to such information in the future. The lack of this valuable input will negatively influence the efficiency and effectiveness of the decision making process.

## **3. OVERRIDING PUBLIC INTEREST**

The exceptions laid down in Articles 4(2) first indent and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. Such an interest must, first, be public and, secondly, outweigh the harm caused by disclosure.

Accordingly, we have also considered whether the risks attached to the release of the withheld parts of the identified document are outweighed by the public interest in accessing the requested documents. We have not been able to identify any such public interest capable of overriding the commercial interests of the companies concerned. The public interest in this specific case rather lies on the protection of the legitimate confidentiality interests of the stakeholders concerned to ensure that the Commission continues to receive useful contributions for its ongoing negotiations with third countries without undermining the commercial position of the entities involved or the ongoing decision-making process.

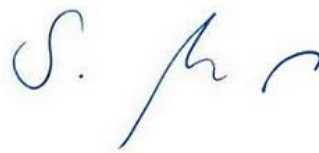
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In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

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, Document Management & Access to Documents unit SG-C-1  
BERL 7/076  
1049 Bruxelles  
Or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'S. Weyand', with a stylized flourish at the end.

Sabine WEYAND

Enclosure: Disclosed document