



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES

Director-General

Brussels,
GROW.C.4/SPR/cds(2020)2546202

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

Mr Hans Diels
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Subject: Request for access to documents – GESTDEM No. 2020/0949

Dear Mr Diels,

Thank you for your e-mail of 7 February 2020 which was registered at the Directorate-General for Climate Action on 18 February 2020, requesting access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L145, 31 May 2001, page 43 and following).

Following your reply of 3 March 2020 to a clarification request sent by DG Climate Action, your request has been transferred to Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs as the scope of your request falls under the competences of this DG.

1. SCOPE OF YOUR REQUEST

Your initial e-mail requested access to documents as follows:

1) minutes and other reports of meetings between European Commission officials and/or representatives (including the Commissioner and the Cabinet) with their United States counterparts on standards and regulations concerning car emissions (since January 2003).

2) all correspondence (including emails, letters) of European Commission officials and/or representatives (including the Commissioner and the Cabinet) with their United States counterparts on standards and regulations concerning car emissions (since January 2003).

3) minutes and other reports of meetings between European Commission officials and/or representatives (including the Commissioner and the Cabinet) and representatives of companies and business associations on transatlantic regulatory cooperation on car emissions standards and regulations (since January 2003).

In accordance with further information from you received on 12 March, the time scope has been modified to start from January 2013 instead of January 2003. On 13 March you specified that the "companies and business associations" should be understood to cover ACEA, American Automotive Policy Council (AAPC) and the Alliance of Automobile Manufacturers (Alliance), as well as Toyota, Volkswagen Group, General Motors, Ford, FCA, Renault, Groupe PSA, BMW and Daimler.

2. AVAILABILITY OF INFORMATION FROM OTHER SOURCES

As background information, I would like to state that the major part of the automotive regulatory co-operation between the United States and the European Union takes place in the framework of the United Nations Economic Commission for Europe, in particular in the context of the 1998 Agreement, to which both the US and EU are Contracting Parties. Within this framework, car emissions are mainly dealt with by the working group "Working Party on Pollution and Energy (GRPE)" and its various informal sub-groups. The detailed meeting minutes and working documents related to this work are in the public domain available on the UNECE website; thus, we will not cover them in the present reply.

3. DESCRIPTION OF DOCUMENTS IDENTIFIED

We have identified seven documents that match the scope of points 1 or 2 of your request. We have not identified any documents matching the scope of point 3. The list of these documents is in annex. Documents 1 and 5-7 are disclosed in their entirety, including the annexes of document 7.

4. PROTECTION OF PERSONAL DATA

The documents to which you have requested access contain personal data, in particular names, functions and address details.

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union 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/EC¹ ('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

¹ Official Journal L 205 of 21.11.2018, p. 39.

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.²

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.³

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵

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 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.

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.

² 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](#).

³ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

⁴ 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.

⁵ 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 data by the Community institutions and bodies and on the free movement of such data, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 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.

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles,
or by email to: sg-acc-doc@ec.europa.eu

5. NON-DISCLOSURE OF THREE DOCUMENTS

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that access to documents 2, 3 and 4 cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4(1)(a), third indent of this Regulation ("The 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, [...] 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"*.⁶ 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"*.⁷

The documents identified contain comments and positions expressed by the US authorities and the European Commission concerning development of various emissions-related legislation. There could be a concrete risk that the public disclosure of these documents would affect the mutual trust between the EU and the US Government, thus undermining their relations. As the Court recognised in Case T-301/10 *in't Veld v*

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

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

Commission, “[...] establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise”⁸.

According to Regulation (EC) No 1049/2001, an exception to the right of access must be waived if there is an overriding public interest in disclosing the document concerned, which outweighs the interest protected by the exception to the right of access. In this case the Commission has reached the conclusion that there appears to be no overriding public interest in their disclosure in the sense of the Regulation.

The possibility of granting partial access in accordance with Article 4(6) of Regulation (EC) No 1049/2001 has also been examined. However, this is not considered possible since the documents in question are covered in their entirety by the above-mentioned exception.

6. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review its 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
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles,
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

(e-signed)
Kerstin Jorna
Director-General

Annexes: Document register, four documents

⁸ Judgment in *Sophie in 't Veld v Commission*, T-301/10, EU:T:2013:135, paragraph 126.