



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels
TRADE/SW/B2 (2022) 9860270

Maximilian Henning
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by email:

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Subject: Your application for access to documents – GESTDEM 2022/7079

Dear Mr Henning,

I refer to your e-mail of 7 December 2022 in which you make a request for access to documents under Regulation (EC) No 1049/2001¹ ('Regulation 1049/2001'), registered under the above-mentioned reference number.

1. SCOPE OF YOUR REQUEST

In your request you ask for public access as follows: *'Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting the flash reports on the WTO e-commerce negotiations since, and including, August'*.

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 1049/2001.²

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 (Official Journal OJ L 145, 31.5.2001, p. 43).

² Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, point 35.

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 would undermine the protection of the interest covered by the exception. Third, the risk of that interest being undermined must be *'reasonably foreseeable and not purely hypothetical'*³. If the institution takes the view that disclosure would undermine the protection of any of the interests defined under Article 4(2) of Regulation 1049/2001, the institution is required *'to ascertain whether there is any overriding public interest justifying disclosure'*.⁴

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents⁵, *'the exceptions to that right [...] must be interpreted and applied strictly'*⁶.

We have been able to identify three documents corresponding to your request. The identified documents are listed for ease of reference in the Annex. For each of the documents, the Annex 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 to this letter.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, these documents may be partially disclosed. Some parts of the documents have been redacted as their disclosure is prevented by exceptions to the right of access laid down in Article 4.1(a) and Article 4.1(b) of this Regulation.

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 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*

³ *Id.*, points 37-43. See also judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, points 52 and 64.

⁴ *Id.*, points 37-43. See also judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, points 52 and 64.

⁵ Recital (4) of Regulation 1049/2001.

⁶ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, point 66.

⁷ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, point 35.

*documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest*⁸.

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'*⁹. 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'*¹⁰.

In this regard, the parts of the documents redacted under the exception provided in article 4.1(a) of the above-mentioned Regulation include the position of several WTO members participating in the Joint Statement Initiative on e-commerce at the WTO. Disclosure of these parts would undermine the protection of international relations, as it would severely affect the mutual trust necessary for conducting these international negotiations.

2.2. Protection of personal data

A complete disclosure of the identified documents is also prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;

Under Article 4(1)(b) of Regulation 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 currently applicable legislation regarding the protection of personal data is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018¹¹ ('Regulation 2018/1725').

Article 3(1) of Regulation 2018/1725 states that personal data *'means any information relating to an identified or identifiable natural person [...]'*. The Court of Justice has indicated that any information, which by reason of its content, purpose or effect, is linked

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

⁹ Judgment in *Sophie in 't Veld v Commission*, T-301/10, EU:T:2013:135, point 123-125.

¹⁰ *Id.*, point 125.

¹¹ 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, OJ L 205, 21.11.2018, p. 39.

to a particular person is to be considered as personal data.¹² Names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are thus to be considered personal data.¹³

Article 9(1)(b) of Regulation 2018/1725 does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

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

3. DISCLAIMERS

Please kindly pay attention that you may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf, based on [Commission Decision 2011/833/EU of 12 December 2011 on the re-use of Commission documents](#)¹⁴. You may reuse the documents disclosed free of charge for non-commercial and commercial purposes, provided that the source is acknowledged, and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume any liability stemming from the reuse.

4. POSSIBILITY OF A CONFIRMATORY APPLICATION

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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Unit C.1. ‘Transparency, Document Management and Access to Documents’
BERL 7/076
B-1049 Brussels
Belgium

¹² See judgment in *Nowak*, C-434/16, EU:T:2018:560, points 33 to 35.

¹³ Judgment in *Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, T-39/17, EU:T:2018:560, points 43 and 44.

¹⁴ OJ L 330, 14.12.2011, p. 39.

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

Yours sincerely,

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

Sabine WEYAND

Enclosures: List of documents; documents (partially) released