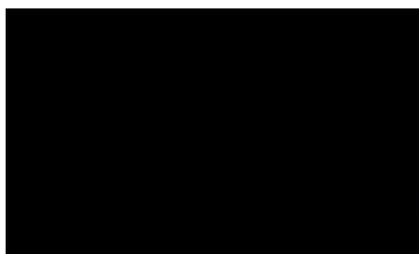




To the attention of:



[@fragdenstaat.de](mailto:info@fragdenstaat.de)

Vienna, 13 December 2019

Ref: 2019-outgoing-1471

Subject: Your application for access to documents pursuant to Regulation No. 1049/2001 – Ref: 2019-incoming-000851

Dear Martin Modlinger,

We refer to your request registered on **27 September 2019**, in which you make a request for access to documents, under the above-mentioned reference number.

In your original application, you request access to the following documents and information:

1. Open-Source Anwendungen und Betriebssysteme
2. Auswirkungen des Brexit
3. CO2-Bilanzen (carbon footprint) der letzten zehn Kalenderjahre

FRA responded to you on 17 October 2019 under Reference number: 2019-outgoing-1366 regarding point 1 and 3. Therefore this reply concerns point 2 of your original request only.

Having carefully analysed your application, FRA established that your application concerns the following documents:

1. *Email*: 26 March 2019 10:20 @EXT RE BREXIT- Guidelines for the dissemination of statistical data and for the representation of the UK on maps after its withdrawal from the EU
2. *Email*: 25 March 2019 7:37 [..]
3. *Email*: 21 March 2019 16:10 [..]
4. *Email Attachment 1*: Guidelines for the representation of the UK on maps after its withdrawal from the EU
5. *Email Attachment 2*: Guidelines for the production and dissemination of statistical data by Commission services after the UK leaves the EU
6. *Email*: 28 March 2019 15:50 FW European Council Decision taken in agreement with the UK of 22 March 2019 extending the period under Article 50(3) TEU operational consequences
7. *Email Attachment 1*: MS_DGx_HoC UK Withdrawal 28.03.2019

8. *FRA Email*: 13 February 2019 19:47 withdrawal of the United Kingdom from the Union – participation in meetings
9. *Email*: 13 February 2019 16:29 withdrawal of the United Kingdom from the Union – participation in meetings
10. *Letter to FRA* 13 February 2019
11. *Email Attachment 1*: Note to HoC and DGx withdrawal of UK-01.31.2019.pdf
12. *Email Attachment 2*: Note to HoCab and DGx withdrawal of UK-04.07.2017.pdf
13. PowerPoint: 04.00.02_hoa_-_annex_ii._tf50_power_point_-_2nd_euan_brexit_working_session

1. Auswirkungen des Brexit

As stated in our letter to you, sent 17 October 2019 Ref: 2019-outgoing-1366, the agency was in consultation with the originators (third party) of the documents listed above, and were pending a decision about the disclosure of documents.

Since this time FRA received a reply from the third party, and after a thorough examination of your application for access to documents pursuant to Regulation No. 1049/2001, the agency has reached the following conclusions:

I. Full disclosure

FRA would like to inform you that **document 13** *04.00.02_hoa_-_annex_ii._tf50_power_point_-_2nd_euan_brexit_working_session* listed above can be disclosed to you in full.

II. Non disclosure

The agency regrets to inform you that the remaining **documents 1-12**, is prevented by exceptions to the right of access laid down in Article 4 (1)(a) and Article 4(3), first subparagraph of Regulation 1049/2001, as explained below.

Protection of the decision-making process

In accordance with Article 4(3), first subparagraph of Regulation 1049/2001 "*[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which related 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 requested internal correspondence relates to sensitive issues of the United Kingdom's withdrawal from the European Union.

The disclosure of the requested correspondence, intended to the Directors-General, Heads of Cabinet and EU Agencies, would make known to the public the internal practical steps related to the rules on the UK's participation in meetings after its withdrawal from the European Union.

Releasing such information could undermine the working relations within the EU institutions and agencies by constraining the ability to exchange internal notes, thereby impairing the serenity of the ongoing internal decision-making process. This would inevitably reduce the Commission's scope of effective future exchanges for fear that such specific details could be made public.

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 public interest as regards the protection of international relations".

Given that the United Kingdom has not withdrawn from the European Union yet and that correspondence relates to the situation after its withdrawal, disclosure of the requested documents would risk damaging the negotiating process by revealing details of a preliminary exchange within the EU institutions and agencies.

Public disclosure, at this stage, would thus risk upsetting the negotiations and this would clearly undermine the public interest as regards international relations. The General Court has acknowledged *"that initiating and conducting negotiations in order to conclude an international agreement fall, in principle, within the domain of the executive, and that public participation in the procedure relating to the negotiation and the conclusion of an international agreement is necessarily restricted, in view of the legitimate interest in not revealing strategic elements of the negotiations."*^[1]

Redress mechanism

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

Such a confirmatory application should be addressed within 15 working days upon receipt of this email to FRA: documents@fra.europa.eu

Yours faithfully,

signed

Constantinos Manolopoulos
Head of Unit Corporate Services

^[1] Judgment of 11 July 2018, *Client Earth v Commission*, quoted above, paragraph 56.