



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Director-General

Brussels, **07 JUL. 2016**
DG JUST / Ares(2016)3880597s

By registered letter with acknowledgment of receipt

Ms Maryant Fernández
European Digital Rights (EDRI)
Rue Belliard 20
1040 Brussels

Advance copy by email : edrigran@edri.org

Dear Madam, dear Members of EDRI

Subject: Your application for access to documents – Ref GestDem No 2016/2724

We refer to your e-mail dated 28/04/2016 in which you make a request for access to documents, registered on 17/05/2016 under the above mentioned reference number.

You request access to:

- all drafts and documents in relation to this "code of conduct against hate speech";
- the exchange of e-mails with industry and the Commission with regard to the preparation of the code of conduct;
- the agenda and minutes of meetings with industry in relation to this code of conduct or practice.

In the context of your request for access to the agenda and minutes of meetings with industry, I would like to inform you that meetings held with IT companies on the code of conduct took the form of drafting sessions for which no agenda or minutes were prepared.

It follows that your application concerns the following documents listed also in an Annex. I would like to inform you that partial access can be granted to the requested documents that need to be redacted for the reasons explained below.

Since some documents concerned originate from third parties, those third parties have been consulted.

1. Protection of the privacy and the integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that access to documents is refused where disclosure would undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

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 Community legislation regarding the protection of personal data. The applicable legislation in this field is 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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable². According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned 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 expunged from this personal data.

It follows from the above that access to the redacted parts of the documents below are covered by the exception provided for in Article 4(1)b, of Regulation 1049/2001 and must be denied on that basis.

Documents that partial access is given on the basis of Article 4(1)(b) of Regulation 1049/2001 to

A. correspondence from representative (s) of Google :

1. From a representative of Google sent on 8 April, 10:04, "Re: Save the date - coordination meeting with [deleted] er States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
2. From a representative of Google to a Commission official, sent on 13 April 15:19, " Re: FW: FOR AGREEMENT Dialogue on hate speech - Meeting 18 April 2016 to discuss draft commitment text"
3. From a representative of Google to a Commission official, sent on 20 April 14:20, "Re: Picture + Short bio"
4. From a representative of Google to Commission officials, sent on 13 May 11:00 "Re: Invitation - Coordination Meeting with Member States, IT companies and Civil Society in the

¹ Official Journal L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

context of the Dialogue with IT Companies on online hate speech - 31 May 2016 – Brussels"
(with attachment)

5. From a representative of Google to a Commission official, sent on 13 May 11:39, "Re: Invitation - Coordination Meeting with Member States, IT companies and Civil Society in the context of the Dialogue with IT Companies on online hate speech - 31 May 2016 – Brussels.
6. From a representative of Google to a Commission official, sent on 19 May 16:00, " Re: Draft code of conduct"
7. From a representative of Google to a Commission official, sent on 11 March 14:03, " Re: Bilateral meeting on next steps for hate speech next week"
8. From a representative of Google to a Commission official, sent on 11 March 15:25, " Re: Bilateral meeting on next steps for hate speech next week"
9. From a representative of Google to a Commission official, sent on 6 April 11:33, "Re: Re: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
10. From a representative of Google to a Commission official, sent on 8 April 16:56, " Re: Possible need for a meeting"
11. From a representative of Google to a Commission official, sent on 8 April 16:58, " RE: Possible need for a meeting"
12. From a representative of Google to a Commission official, sent on 12 April 9:47, " Re: comments on the commitments"
13. From a representative of Google to a Commission official, sent on 13 April 14:52, Re: FW: FOR AGREEMENT Dialogue on hate speech - Meeting 18 April 2016 to discuss draft commitment text"
14. From a representative of Google to a Commission official, sent on 15 April 13:43, " Re: Dialogue on hate speech - Meeting 18 April 2016 to discuss draft commitment text"
15. From a representative of Google to a Commission official, sent on 19 April 10:46, "Re: FYI - meeting with CABINET - 25 April – timing"
16. From a representative of Google to a Commission official, sent on 19 April 17:57, "Re: Draft text public commitments"
17. From a representative of Google to Commission officials, sent on 22 April 12:34, "Re: Draft text public commitments" (with an attachment)
18. From a representative of Google to a Commission official, sent on 11 May 10:19 "[deleted] OoO"

B. correspondence from representative(s) of Microsoft:

1. From an assistant of a representative of Microsoft to a Commission official, sent on 15 March 12:16, "RE: draft commitment text"
2. From a representative of Microsoft to Director Paul Nemitz and another Commission official, sent on 15 April 15h18, "From "RE: FOR AGREEMENT Dialogue on hate speech - Meeting 18 April 2016 to discuss draft commitment text"
3. From a representative of Microsoft to Commission officials, sent on 24 April 21:31, "RE: FYI - meeting with CABINET - 25 April – timing"
4. From a representative of Microsoft to a Commission official, sent on 15 May 19:39 "RE: i am trying to call you but do not get through - can you call me on the below office number or send me your details again?"
5. From a representative of Microsoft to Commission officials, sent on 17 May 11:25, "RE: Meeting with [deleted] and [deleted] - DG JUSTICE - 23 May"
6. From representative of Microsoft to Commission officials, sent on 20 May 15:30
7. From a representative of Microsoft to Director Paul Nemitz and another Commission official, sent on 27 May 23:30, "hate speech"
8. From a representative of Microsoft to Director Paul Nemitz and another Commission officials, sent on 30 May 15.26 "RE: hate speech"

C. correspondence by representative(s) of Twitter:

1. From a representative of Twitter to a Commission official, sent on 11 March 17:21, "Re: Hate speech next steps"
2. From a representative of Twitter to a Commission official, sent on 13 March 21:27, "Re: phone call hate speech next steps"
3. From a representative of Twitter to a Commission official, sent on 14 March 12:20, "Re: draft commitment text"
4. From a representative of Twitter to a Commission official, sent on 6 April 11:57, "Re: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
5. From a representative of Twitter to a Commission official, sent on 6 April 13:10, "Re: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
6. From a representative of Twitter to a Commission official, sent on 6 April 14:48, "Re: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"

7. From a representative of Twitter to a Commission official, sent on 8 April 12:10, "Re: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
8. From a representative of Twitter to a Commission official, sent on 8 April 17:13, "Re: Possible need for a meeting"
9. From a representative of Twitter to a Commission official, sent on 11 April 13:20, "Re: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
10. From a representative of Twitter to a Commission official, sent on 13 April 17:28 "Re: FW: FOR AGREEMENT Dialogue on hate speech - Meeting 18 April 2016 to discuss draft commitment text"
11. From a representative of Twitter to a Commission official, sent on 19 April 13:01 " Re: FYI - meeting with CABINET - 25 April – timing"
12. From a representative of Twitter to Commission officials, sent on 19 April 13:03 " Meeting"
13. From a representative of Twitter to a Commission official, sent on 19 April 18:26 "Re: Draft text public commitments"
14. From a representative of Twitter to a Commission official, sent on 22 April 18:17 " Re: Draft text public commitments"
15. From a representative of Twitter to a Commission official, sent on 22 April 18:31 " Re: Draft text public commitments"
16. From a representative of Twitter to a Commission official, sent on 22 April 21:08 "Twitter_Comments and Changes to CoP_22April .pdf" (with attachment)
17. From a representative of Twitter to a Commission official, sent on 26 April 20:01 " Out of Office Re: draft code of conduct - text following the meeting on 25 April"
18. From a representative of Twitter to a Commission official, sent on 27 April 17:34 draft code of conduct - text following the meeting on 25 April
19. From a representative of Twitter to a Commission official, sent on 13 May 12:48 " Re: Invitation - Coordination Meeting with Member States, IT companies and Civil Society in the context of the Dialogue with IT Companies on online hate speech - 31 May 2016 - Brussels
20. From a representative of Twitter to a Commission official, sent on 18 May 14:19 " Re: tried to call"
21. From a representative of Twitter to a Commission official, sent on 19 May 7:49, " Re: tried to call"

22. From a representative of Twitter to a Commission official, sent on 19 May 23:39 " Re: FW: Draft code of conduct"
23. From a representative of Twitter to a Commission official, sent on 19 May 23:45 " Re: FW: Draft code of conduct"
24. From a representative of Twitter to a Commission official, sent on 20 May 13h55, " Re: FW: Draft code of conduct"
25. From a representative of Twitter to a Commission official, sent on 20 May 15:26 " Re: FW: Draft code of conduct"

D. correspondence from representative(s) of Facebook:

1. From a representative of Facebook to a Commission official, sent on 8 April 00.21"RE: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
2. From a representative of Facebook to a Commission official, sent on 12 April 11:41 "Code of conduct - Google/Twitter/Facebook input"
3. From a representative of Facebook to a Commission official, sent on 13 April 00:00, " Meeting on the 18th"
4. From a representative of Facebook to a Commission official, sent on 15 April 13:04 "Re: Dialogue on hate speech - Meeting 18 April 2016 to discuss draft commitment text"
5. From a representative of Facebook to a Commission official and representatives of other companies, sent on 3 May 9:22, "Draft code of conduct on Hate Speech" (with an attachment)
6. From a representative of Facebook to a Commission official and representatives of other companies, sent on 4 May 18:01 " Re: Draft code of conduct on Hate Speech"
7. From a representative of Facebook to a Commission official, sent on 12 May 17.22, "Re: Draft code of conduct"
8. From a representative of Facebook to a Commission official, sent on 19 May 15:14, "Re: Draft code of conduct"

E. Correspondence from official(s) of the European Commission:

1. From a representative of the Commission to a representative of Twitter, sent on 13 March 22:26 "draft commitment text"
2. From a representative of the Commission to a representative of Facebook, sent on 13 March 22:28 "draft commitment text"
3. From a representative of the Commission to a representative of Google, sent on 13 March 22:30 "draft commitment text"

4. From a representative of the Commission to a representative of Microsoft, sent on 13 March 22:31 "draft commitment text"
5. From a representative of the Commission to a representative of Twitter, sent on 14 March 13:04, " RE: draft commitment text"
6. From a representative of the Commission to a representative of Microsoft, sent on 15 March 8:42, " RE: draft commitment text"
7. From a representative of the Commission to a representative of Facebook, sent on 18 March 19:06, " Absence until 4 April"
8. From a representative of the Commission to a representative of Google, sent on 18 March 19:07, "Absence until 4 April"
9. From a representative of the Commission to a representative of Microsoft, sent on 18 March 19:09, " FW: Absence until 4 April"
10. From a representative of the Commission to a representative of Twitter, sent on 18 March 19:16, " FW: Absence until 4 April"
11. From a representative of the Commission to a representative of Microsoft, sent on 6 April 10:45 " Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies"
12. From a representative of Commission to a representative of Twitter, sent on 6 April 10:51 " Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
13. From a representative of the Commission to a representative of Google, sent on 6 April 10:52 " Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
14. From a representative of the Commission to a representative of Facebook, sent on 6 April 10:56, " Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
15. From a representative of the Commission to a representative of Google, sent on 6 April 11:52 " RE: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
16. From a representative of the Commission to a representative of Twitter, sent on 6 April 12.28 " RE: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
17. From a representative of the Commission to a representative of Facebook, sent on 8 April 7:59 "RE: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"

18. From a representative of Commission to a representative of Google, sent on 8 April 9:41, "RE: Save the date - coordination meeting with Memb[deleted]er States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
19. From a representative of the Commission to a representative of Twitter, sent on 8 April 14:05 "RE: Save the date - coordination meeting with Member States, IT companies and Civil Society in the context of the dialogue with IT companies on online hate speech"
20. From a representative of the Commission to all companies, sent on 8 April 16:38 " Possible need for a meeting"
21. From a representative of the Commission to a representative of Google, sent on 11 April 16:57 "RE: Possible need for a meeting"
22. From a representative of the Commission to a representative of Google, sent on 12 April 8:13 "comments on the commitments"
23. From a representative of the Commission to all companies, sent on 13 April 14:10 " FW: FOR AGREEMENT Dialogue on hate speech - Meeting 18 April 2016 to discuss draft commitment text"
24. From a representative of the Commission to all companies, sent on 15 April 12:56 " Dialogue on hate speech - Meeting 18 April 2016 to discuss draft commitment text"
25. From a representative of the Commission to a representative of Microsoft, sent on 15 April 12:58 ""FW: FOR AGREEMENT Dialogue on hate speech - Meeting 18 April 2016 to discuss draft commitment text"
26. From a representative of the Commission to a representative of Twitter, sent on 15 April 17:41, "meeting on 25th April"
27. From a representative of the Commission to all companies, sent on 15 April 18:22 "RE: Dialogue on hate speech - Meeting 18 April 2016 to discuss draft commitment text"
28. From a representative of the Commission to all companies, sent on 19 April 17:15 "Draft text public commitments" (with attachment)
29. From a representative of the Commission to all companies, sent on 22 April 9:58 "RE: Draft text public commitments"
30. From a representative of the Commission to all companies, sent on 22 April 18:22 " RE: Draft text public commitments"
31. From a representative of the Commission to all companies, sent on 26 April 20:01 "draft code of conduct - text following the meeting on 25 April" (with an attachment)
32. From a representative of the Commission to all companies, sent on 27 April 12:26 " RE: draft code of conduct - text following the meeting on 25 April" (with an attachments)

33. From a representative of the Commission to all companies, sent on 3 May 15:18 " RE: Draft code of conduct on Hate Speech"
34. From a representative of the Commission to all companies, sent on 3 May 15:48 " Agenda Meeting 31-05_v1.doc" (with an attachments)
35. From a representative of the Commission to all companies, sent on 4 May 10:03 "RE: Draft code of conduct on Hate Speech"(with an attachment)
36. From a representative of the Commission to all companies, sent on 10 May 10:5 "Invitation - Coordination Meeting with Member States, IT companies and Civil Society in the context of the Dialogue with IT Companies on online hate speech - 31 May 2016 – Brussels" (with attachments)
37. From a representative of the Commission to all companies, sent on 12 May 17:14 "Invitation - Coordination Meeting with Member States, IT companies and Civil Society in the context of the Dialogue with IT Companies on online hate speech - 31 May 2016"
38. From a representative of the Commission to a representative of Facebook, sent on 12 May 17:24 "Invitation - Coordination Meeting with Member States, IT companies and Civil Society in the context of the Dialogue with IT Companies on online hate speech - 31 May 2016"
39. From a representative of the Commission to all companies, sent on 13 May 11:37 "Invitation - Coordination Meeting with Member States, IT companies and Civil Society in the context of the Dialogue with IT Companies on online hate speech - 31 May 2016"
40. From a representative of the Commission to all companies, sent on 17 May 18:59 "Draft Code of Conduct" (with attachment)
41. From a representative of the Commission to a representative of Twitter, sent on 18 May 14:20 "Tried to call"
42. From a representative of the Commission to a representative of Facebook sent on 19 May 11:55 "Draft code of conduct"
43. From a representative of the Commission to all companies, sent on 19 May 17:17 "Draft Code of Conduct"
44. From a representative of the Commission to all companies, sent on 20 May 13:58 "Draft Code of Conduct" (with attachment)

2. Commercial interests of a natural or legal person, including intellectual property and access 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

Article 4(2) first indent of Regulation 1049/2001 provides that 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.

Furthermore article 4(3) of Regulation 1049/2001 provides that access 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. Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall also be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Having examined the documents requested and referred to below against these provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that the documents below may be partially disclosed.

More in particular the use of the exception under Article 4(2), first indent, of Regulation (EC) No 1049/2001 to motivate redaction of certain parts of these documents on the grounds of protecting commercial interests is justified for these documents since its disclosure would allow the instructed public to gather important information of business relevance and internal procedures, which would be harmful to the companies. Furthermore it should be noted that these documents contains opinions as part of deliberations and preliminary consultations between the Commission and third parties. Access such content would curtail the “space to think”, i.e. the possibility of Commission staff to freely submit uncensored advice and deliberate with third parties. In this manner, public access to such documents would impair the quality of the decision-making process. Disclosure of these parts of the documents would also damage trust in the ongoing and future relations between the Commission and commercial undertakings. Without prejudice to the possible need to refuse such access also once the dialogue will have ended, it should be noted that disclosure of the redacted data cannot be provided at this point in time since the dialogue with the IT industry on hate speech is ongoing and the Code of Conduct is a continued process insofar that deliberations on its implementation as well as discussions on the next steps on further works in the area of transparency and counternarratives are still underway.

It follows from the above that access to the redacted parts of the documents below are covered by the exception provided for in Article 4(2), first indent and Article 4(3) of Regulation 1049/2001 and must be denied on that basis.

Documents that partial access is given on the basis of Article 4(2), first indent and Article 4(3) of Regulation 1049/2001 to:

A. correspondence from representative (s) of Google:

4. From a representative of Google to Commission officials, sent on 13 May 11:00 "Re: Invitation Coordination Meeting with Member States, IT companies and Civil Society in the context of the Dialogue with IT Companies on online hate speech - 31 May 2016 – Brussels" (with attachment)

D. correspondence from representative(s) of Facebook:

5. From a representative of Facebook to a Commission official and representatives of other companies, sent on 3 May 9:22, "Draft code of conduct on Hate Speech" (attachment only)

C. correspondence by representative(s) of Twitter:

16. From a representative of Twitter to a Commission official, sent on 22 April 21:08 "Twitter_Comments and Changes to CoP_22April .pdf" (with attachment)

E correspondence from official(s) of the European Commission:

31. From a representative of the Commission to all companies, sent on 26 April 20:01 "draft code of conduct - text following the meeting on 25 April" (with an attachment)
32. From a representative of the Commission to all companies, sent on 27 April 12:26 " RE: draft code of conduct - text following the meeting on 25 April" (with an attachments)
34. From a representative of the Commission to all companies, sent on 3 May 15:48 " Agenda Meeting 31-05_v1.doc" (with an attachments)
35. From a representative of the Commission to all companies, sent on 4 May 10:03 "RE: Draft code of conduct on Hate Speech"(with an attachment)
40. From a representative of the Commission to all companies, sent on 17 May 18:59 "Draft Code of Conduct" (with attachment)

3. Protection of information out of the scope of the request of information under Ref GestDem No 2016/2797 and No 2016/2800

One document has been partially disclosed due to the fact that the remaining content does not relate to the scope of the request of information according to request Ref GestDem No 2016/2724. Therefore, some parts of the document have been redacted disclosure is not related to the request.

Document that partial access is given on the basis that the document contains information out of the scope of the request:

35. From a representative of the Commission to all companies, sent on 4 May 10:03 "RE: Draft code of conduct on Hate Speech"(with an attachment)

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 unit SG-B-4
BERL 5/282
B-1049 Bruxelles

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

Yours sincerely,



Tiina Astola

Director-General