



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director-General

Brussels,
Grow E1/AT/tb
grow.ddg2.e.1(2017)5862446

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

Mr Kenneth Haar
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Denmark

Advance copy by email:
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Subject: Request for access to documents – GESTDEM No. 2017/5304

Dear Mr Haar,

Thank you for your e-mail of 12 September 2017 which was registered at the Secretariat-General of the European Commission on 12 September 2017, 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).

1. SCOPE OF YOUR REQUEST

Your e-mail requested access to documents as follows:

"1) a list of meetings (from 1. January 2015 till today)[12.09.2017] of Commissioner Elżbieta Bieńkowska, members of her cabinet or representatives of DG Grow AND representatives of the European Holiday Home Association, Sharing Economy, European Collaborative Economy Forum, European Digital Media Association and AirBnB.

2) minutes and other reports of these meetings;

3) all correspondence with entities listed above, including emails from 1 January 2015 till today [12.09.2017]."

2. DESCRIPTION OF DOCUMENTS IDENTIFIED

We have identified 96 documents that match the scope of your request. The lists of these documents are in annex.

12 documents relate to meetings held between the DG Internal Market, Industry, Entrepreneurship and SMEs and the mentioned companies. Please note that the content of the reports of meetings with the third parties were drafted by the Commission; therefore they represent the Commission's interpretation of what was discussed in the meetings and were not verified by the third parties.

84 documents include correspondence between the DG Internal Market, Industry, Entrepreneurship and SMEs and the companies at stake.

Your request also concerns the disclosure of documents related to the organisation 'Sharing Economy'. However, we were not able to identify any company/association or organisation with this specific name, with which the Commission has exchanged documents or had meetings with. Therefore our reply focuses on documents related to the European Holiday Home Association, European Collaborative Economy Forum, European Digital Media Association and AirBnB.

3. FULL DISCLOSURE OF 64 DOCUMENTS

64 documents are fully disclosed¹. 7 from those relate to the meetings held and 57 to correspondence with those companies.

The documents to which you have requested access contain 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 data².

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable³.

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.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, 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:

¹ Except for redaction of personal data. Please see reference below.

² Official Journal L 8 of 12.1.2001, p. 1

³ 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.

European Commission
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Transparency unit SG-B-4
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B-1049 Bruxelles

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

4. PARTIAL DISCLOSURE OF 11 DOCUMENTS

11 documents have been partially disclosed. Out of these, 5 relate to reports of meetings and 6 to correspondence with the requested companies.

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 12 documents can only be provided partially based on a) the exception of Art.4 (2) first indent ('The 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'), since the full disclosure of these documents would affect the competitive position of the relevant companies on the market or would disclose business secrets, b) the exception of Art.4 (2) third indent ('The institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits'), since the Commission is in the process of assessing the regulatory situation with regard to the collaborative economy in some Member States and disclosure of some documents or information at this point in time would affect this ongoing process, and/or c) the exception of Art.4 (3) (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), which is closely linked to the second exception. Disclosure of these documents would undermine the decision-making process of the Commission, as it would reveal views and elements which are currently under consideration.

Please note that regarding those documents originating from third parties, in particular those for which an exception under Regulation 1049/2001 would apply, DG Internal Market, Industry, Entrepreneurship and SMEs has consulted them according to Article 4, paragraph 4 of Regulation 1049/2001 and has obtained their permission to release these documents partially invoking the above exceptions.

Please note that the documents received from third parties are disclosed for information only and cannot be re-used without the agreement of the originators, who hold a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

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.

5. NON-DISCLOSURE OF 21 DOCUMENTS

The DG Internal Market, Industry, Entrepreneurship and SMEs has identified 21 documents to which access cannot be granted. Access to these documents cannot be granted, as disclosure is prevented by exception to the right of access laid down in Art.4 (2) first indent ('The 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'), Article 4(2), third indent of this Regulation ("The institutions shall refuse access to a document where disclosure would undermine the protection of [...] - the purpose of inspections, investigations and audits") and Art.4 (3) (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). The same considerations as above apply to the exceptions invoked for the non-disclosure of these 21 documents.

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 exceptions.

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
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles

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

Yours sincerely

Lowri EVANS
Director General

Annexes: Document register
List of meetings with the requested companies
Zipped files