



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES
Single Market Policy, Regulation and Implementation
Single Market Policy, Mutual Recognition and Surveillance

Brussels, **13.03.2019**
grow.ddg1.b.1(2019)1722691

Mr Alexander Fanta
netzpolitik.org
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Germany

By registered letter with
acknowledgment of receipt

Advance copy by email:
ask+request-6405-
d69edd99@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2019/0904

Dear Mr Fanta,

We refer to your e-mail dated 15/02/2019 in which you make a request for access to documents, registered on 15/02/2019 under the above mentioned reference number.

We enclose a copy of the documents requested.

Please note that the documents were received by the Commission from DIGITALEUROPE. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

Furthermore, please note that one of the documents is a study carried out by external experts. It does not reflect the position of the Commission and cannot be quoted as such.

Concerning the summary record of the meeting, this document was drawn up for internal use under the responsibility of the relevant officials of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. It solely reflects the author's] interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which was not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

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').

Some of the documents to which you request access contain personal data, in particular names and handwritten signatures.

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 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

In its judgment in Case C-28/08 P (*Bavarian Lager*)³, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁴.

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

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

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 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

⁴ 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.

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.

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

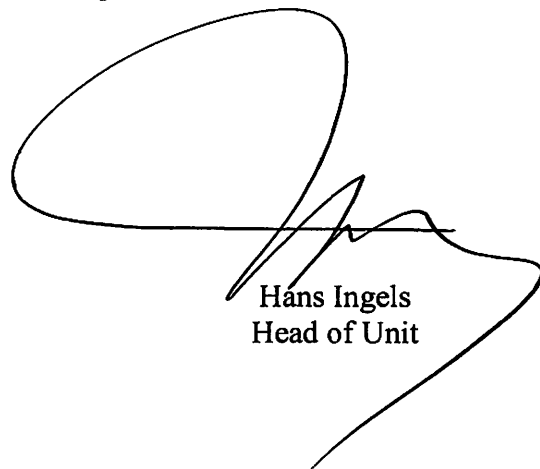
Secretariat-General

Unit C.1. 'Transparency, Document Management and Access to Documents'

BERL 7/076

B-1049 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



Hans Ingels
Head of Unit

Enclosures: Letter of DIGITALEUROPE on e-labelling
DIGITALEUROPE input to Single Market (October 2018)
E-labelling key findings
Study for the introduction of an e-labelling scheme in the EU - CBA
- final report 21062018
Study for the introduction of e-labelling scheme in EU - Case study -
final report 21062018
Summary record of the meeting held on 13 November 2018