



The Director-General

Brussels,
TRADE/SW

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

Mr Joerg Stahl
Praça Ilha do Faial 7, 1º Dto.
1000-168, Lisboa
Portugal

Advance copy by email:

[ask+request-6983-
5c01c0bb@asktheeu.org](mailto:ask+request-6983-5c01c0bb@asktheeu.org)

Subject: Your application for access to documents – Ref GestDem No 2019/3471

Dear Mr Stahl,

I refer to your email of 17 June 2019 in which you make a request for access to documents under Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001"), and which was registered on the 18 June 2019 under the reference GestDem No 2019/3471.

1. SCOPE OF YOUR REQUEST

You request access to documents which contain the following information:

1. *all documents related to the 23-01-2015 meeting between Commissioner Cecilia Malmström and Google, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations*
2. *all documents related to the 29-06-2015 meeting between Commissioner Cecilia Malmström and Facebook Ireland Limited, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations*
3. *all documents related to the 23-09-2015 meeting between Commissioner Cecilia Malmström and The Goldman Sachs Group, including but not limited to minutes,*

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, OJ L 145, 31.5.2001, p. 43.

(hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations

4. *all documents related to the 20-04-2016 meeting between Commissioner Cecilia Malmström and IBM Corporation, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations*
5. *all documents related to the 07-09-2017 meeting between Commissioner Cecilia Malmström and General Electric Company, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations*
6. *all documents related to the 11-10-2017 meeting between Commissioner Cecilia Malmström and IBM Corporation, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations*
7. *all documents related to the 26-11-2018 meeting between Commissioner Cecilia Malmström and IBM Corporation, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations*

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In relation to **point 1** and meeting held on 23-01-2015 with Google, we have identified 3 documents (doc 1-3) that fall under the scope of your request: a meeting request from Google (Ares(2014)4329114), a meeting confirmation (Ares(2015)115050) and a meeting report (Ares(2015)307193). The meeting report is a note to the file made by the Commissioner during her meetings in Davos on 23-24 January 2015 and only the very first point relates to the meeting with Google. We have redacted the rest of the document as out of scope.

In relation to **point 2**, we have identified 3 documents (doc 4-6) that fall under the scope of your request: a meeting request from Facebook Ireland (Ares(2015)2303470), a meeting report (Ares(2015)2716960) and a thank you note from Facebook Ireland (Ares(2015)2730106).

For **point 3**, I can confirm that the Commission does not have any document relating to meetings held with Goldman Sachs on 23 September 2015. As specified in the Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

In relation to **point 4** and meeting with IBM Corporation on 20 April 2016, we have identified 4 documents (doc 7-10): a meeting request from IBM (Ares(2016)43041), a meeting confirmation (both in Swedish) (Ares(2016)160572), a meeting report (Ares(2016)1890589) as well as a thank you note from IBM (Ares(2016)2100565)

For **point 5** and meetings with General Electric Company on 07 September 2017, we have identified 4 documents with annexes (**doc 11-14**): a meeting request with annex (Ares(2017)4103739), a meeting confirmation (Ares(2017)4136387), a meeting report (Ares(2017)4672591) as well as a thank you note (Ares(2017)4399038) with an annex.

The meeting request (**doc 11**) has a biography as an attachment. In compliance with Article 4(1)(b) of Regulation 1049/2001 and the protection of the personal data, we are unable to supply you with this annex to document **11**. The thank you note (**doc 14**) comes with an annex which has been published online:

[https://www.wsj.com/articles/trum \(ps-looming-trade-crack-up-1504653219](https://www.wsj.com/articles/trum (ps-looming-trade-crack-up-1504653219)

In relation to **point 6** and meeting with IBM Corporation on 11 October 2017, we have identified 4 documents (**doc 15-18**): a meeting request (Ares(2017)3632775), a meeting confirmation (Ares(2017)3750711), a meeting report with 2 annexes (Ares(2017)5104438) as well as a thank you note (Ares(2017)5212453). The annexes to the meeting report can be found online:

<https://www.ibm.com/blogs/policy/dataresponsibility-at-ibm/>
https://www.ibm.com/blogs/policy/wp-content/uploads/2017/10/IBM_DataResponsibility-A4_WEB.pdf

In relation to **point 7** and meeting with IBM Corporation on 26 November 2018, we have identified 3 documents (**doc 19-21**): a meeting request from IBM (Ares(2018)4654118), a meeting confirmation Ares(2018)34933707) and a thank you note (Ares(2018)6247455).

I am glad to inform you that access can be granted to the content of almost all the documents. However, some personal data have been withheld in accordance with Article 4(1)(b) of Regulation 1049/2001. In line with the Commission's commitment to ensure transparency and accountability², the names of the Members of Cabinet are disclosed. Additionally, in document 9 some parts were redacted as they are covered by the exception set out in Article 4(2) first indent of Regulation 1049/2001 (protection of the commercial interest of a natural or legal person. The reasons justifying the application of the exceptions are set out below in Sections 2.1 and 2.2 while Section 3 contains an assessment of whether there exists an overriding public interest in the disclosure. Copies of the accessible documents are enclosed.

2.1 Protection of privacy and integrity of the individual

Article 4(1) (b) of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where 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 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

² See Commission decisions C(2014) 9051 and C(2014) 9048 of 25 November 2014.

agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC3 ('Regulation 2018/1725').

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.⁴ Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.⁵

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁶, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁷

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 proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

³ Official Journal L 205 of 21.11.2018, p. 39.

⁴ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

⁵ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, ECLI:EU:T:2018:560.

⁶ 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.

⁷ 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.

2.2 Protection of commercial interests

Article 4(2) first indent, of Regulation 1049/2001 provides that “[t]he 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 [...] unless there is an overriding public interest in disclosure”.

While not all information concerning a company and its business relations can be regarded as falling under the exception of Article 4(2) first indent⁸, it appears that the type of information covered by the notion of commercial interests would generally be of the kind protected under the obligation of professional secrecy⁹. Accordingly, it must be information that is “known only to a limited number of persons”, “whose disclosure is liable to cause serious harm to the person who has provided it or to third parties” and for which “the interests liable to be harmed by disclosure must, objectively, be worthy of protection”¹⁰.

Some passages in document 9 have been withheld because they contain business sensitive information including details about commercial priorities, objectives, strategies, concerns and interests that they pursue in their domain.

All this information was shared with the Commission in order to provide useful input and support for the EU’s objectives in its trade negotiations. Operators typically share information with the Commission so that the latter can determine how to best position itself in the negotiations in order to protect its strategic interests and those of its industry, workers and citizens. Ensuring that the Commission continues to receive access to this information and that the industry engages in open and frank discussions with the Commission, are key elements for the success of the internal and external policies of the EU and its international negotiations. Sharing publicly specific business related information that companies share with the Commission may prevent the Commission from receiving access to such information in the future.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(2) first indent of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. Such an interest must, first, be public and, secondly, outweigh the harm caused by disclosure. Accordingly, we have also considered whether the risks attached to the release of the withheld parts of document 9 are outweighed by the public interest in accessing the requested documents. We have not been able to identify any such public interest capable of overriding the commercial interests of the companies concerned. The public interest in this specific case rather lies on the protection of the legitimate confidentiality interests of the stakeholders concerned to ensure that the Commission continues to receive useful

⁸ Judgment in *Terezakis v Commission*, T-380/04, EU:T:2008:19, paragraph 93.

⁹ See Article 339 of the Treaty on the Functioning of the European Union.

¹⁰ Judgment in *Bank Austria v Commission*, T-198/03, EU:T:2006:136, paragraph 29.

contributions for its ongoing negotiations with third countries without undermining the commercial position of the entities involved.

In case you would disagree with the assessment provided above, 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:

European Commission
Secretary-General
Transparency, Document Management & Access to Documents unit SG-C-1
BERL 7/076
1049 Bruxelles

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

Yours sincerely,



p.o. Sabine WEYAND

Enclosures: List of documents
Available documents