Ms Clothilde Goujard

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 – EASE 2022/4576

Dear Ms Goujard,

I refer to your e-mail of 11 October 2022, registered on 12 October 2022, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereafter ‘Regulation (EC) No 1049/2001’).

Please accept our apologies for the delay in the handling of your request.

1. SCOPE OF YOUR REQUEST

In your initial application of 11 August 2022, handled by the European Commission’s Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, you referred to several meetings between the Cabinet of the European Commissioner for Internal Market, Thierry Breton, and several key industries and associations, including a meeting with Meta Platforms, Vinted and Amazon that took place on 15 June 2022. In relation to these meetings, you requested access to, I quote,

- ‘All minutes, agendas, summary, memos and any other reports issued both in preparation and after the meetings took place.

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- All correspondence including attachments (including, but not limited to any emails, correspondence or telephone call notes) and follow-ups, between any Directorates-General/the cabinet, Commissioner Breton and the companies/organizations or any intermediaries representing their interests.

- All correspondence including attachments (i.e., any emails, correspondence or telephone call notes) and follow-ups, between any Directorate Generals, the cabinet and Commissioner Breton about those meetings, issued both prior and after.

- All documents prepared for the meetings and exchanged in the course of the meetings between both parties’.

In its initial decision of 10 October 2022, the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs identified eight documents as falling under the scope of your request and provided you with a list of these documents. It granted access to seven documents subject only to the redaction of personal data in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

As regards the remaining document, concerning the meeting with Meta Platforms, Vinted and Amazon of 15 June 2022 (minutes of a high-level roundtable between Commissioner Breton and key industrial associations, 15 June 2022, reference Ares(2022)4458696) (hereafter ‘document 8’), the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs refused access to it based on the first subparagraph (protection of the decision-making process) of Article 4(3) of Regulation (EC) No 1049/2001.

Finally, the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs informed you that it does not hold other documents that would correspond to the description given in your application.

In your confirmatory application, you request a review of the decision of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs to protect document 8 based on the first subparagraph (protection of the decision-making process) of Article 4(3) of Regulation (EC) No 1049/2001.

Therefore, the scope of this confirmatory review is circumscribed to the review of the position of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs as regards document 8. The arguments that you have put forward in your confirmatory request have been considered in this assessment, set out in the corresponding sections below.
2. **ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

Document 8 concerns a high-level roundtable that took place on 15 June 2022 in relation to the EU Toolbox against counterfeiting. The Commission launched a strategic dialogue to consult and collect the views of a wide range of key public and private sector actors on this initiative. The document was drawn up for internal use under the responsibility of the relevant services of the Commission. It 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 were not consulted on their content. The document does not reflect the position of the Commission and cannot be quoted as such.

On 19 March 2024, the Commission adopted a recommendation on measures to combat counterfeiting and enhance the enforcement of intellectual property rights (C(2024) 1739 final). The Commission’s recommendation and the feedback of business associations in response to the Commission’s call for evidence are published on the Commission’s website³.

Following the Secretariat-General’s review, partial access to document 8 is hereby granted, subject to the redaction of personal data performed based on Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

The detailed reasons underpinning this assessment are outlined below.

### 2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 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’.

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, 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 data⁵ (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

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³ [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12915-EU-toolbox-against-counterfeiting_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12915-EU-toolbox-against-counterfeiting_en)


However, the case-law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with […] [the Data Protection] Regulation’⁷.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person […]’.

As the Court of Justice confirmed in Case C-465/00 (Rechnungshof), ‘there is no reason of principle to justify excluding activities of a professional […] nature from the notion of private life’⁸.

Document 8 contains personal data such as the names and surnames of persons who do not form part of the senior management of the European Commission. The document also contains personal data such as names, surnames, and positions of representatives of stakeholders.

The names⁹ of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 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 (EU) 2018/1725, can the transmission of personal data occur.

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⁷ European Commission v The Bavarian Lager judgment, cited above, paragraph 59.
⁸ Judgment of the Court of Justice of 20 May 2003, Rechnungshof and Others v Österreichischer Rundfunk, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.
⁹ European Commission v The Bavarian Lager judgment, cited above, paragraph 68.
In Case C-615/13 P (ClientEarth), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data\(^\text{10}\). This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the Commission must examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 must 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.

In your confirmatory application, 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 Commission does not have to examine whether there is a reason to assume that the data subjects’ legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the disclosure of the personal data reflected in the document, 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, the Secretariat-General concludes 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 the disclosure of the personal data concerned.

3. **OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

4. **PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, the Secretariat-General has considered the possibility of granting partial access to document 8.

As explained above, wide partial access is granted to the document, subject only to the redaction of personal data. However, for the reasons explained above, no broader partial access is possible without undermining the protection of the privacy and integrity of the persons referred to above.

5. **Means of Redress**

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Ilze JUHANSONE
Secretary-General

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