



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,

Mrs Margarida Da Silva
Rue d'Edimbourg 26
1050 Brussels
BELGIUM

Email: ask+request-5470-f381b775@asktheeu.org

REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents – GestDem 2018/2284

Dear Mrs Da Silva

We refer to your application for access to documents dated 25/04/2018 and registered on the same date under the above mentioned reference number. We also refer to your email dated 18/05/2018 and registered on 22/05/2018, in which you clarified the wording of your request (our reference Ares(2018)2626248), and to our email dated 25/05/2018 (our reference Ares(2018)2723535), whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation (EC) No 1049/2001 on public access to documents (hereinafter 'Regulation 1049/2001').

1. SCOPE OF YOUR APPLICATION

You request access to:

'- a list of lobby meetings held by DG CONNECT with Facebook or its intermediaries. The list should include: date, individuals attending and organisational affiliation, the issues discussed.

- minutes and other reports of these meetings;

- all correspondence (i.e. any emails, correspondence or telephone call notes) between DG CONNECT (including the Commissioner and the Cabinet) and Facebook or any intermediaries representing its interests.'

In this regard, reference is made to our proposal for a fair solution of 25/05/2018, by means of which the scope of your application was limited to reports and minutes, as well as correspondence on lobby meetings with Facebook (or with law firms and consulting

companies directly representing this company), excluding other intermediaries, as from 01/11/2014.

You have accepted this fair solution by email dated 01/06/2018 (our reference Ares(2018)3585304). I therefore consider your request to cover the above mentioned documents held up to the date of your initial application of 25/04/2018.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST AND ASSESSMENT UNDER REGULATION 1049/2001

As specified in Article 2(3) of Regulation 1049/2001, the right of access applies only to existing documents in the possession of the institution.

We would like to inform you that the European Commission (hereinafter 'the Commission') does not hold any document that would correspond to "a list of lobby meetings held by DG CONNECT with Facebook or its intermediaries".

Within the statutory time limits foreseen by Regulation 1049/2001 and considering the Commission's scarce resources available, DG Connect has been able to identify and assess 52 documents held by it and falling within the scope of your application. These documents are minutes and reports of lobby meetings with Facebook and DG Connect, as well as email exchanges on such meetings. The list of documents held by DG Connect is included in Annex 1 to this reply.

Those parts of the documents which fall outside the scope of your request have been redacted with a written indication ('out of the scope') on the right of the corresponding passage.

Having examined these documents under the provisions of Regulation 1049/2001 and taking into account the consultation of third parties (Facebook and Teneo Cabinet DN) involved, we have arrived at the conclusion that full access can be given to one document whereas partial access can be granted to all other documents.

a. Full access

Please find enclosed a copy of document n°26 "20171020_P2B workshop_Agenda".

You may reuse the document free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

b. Protection of personal data

Article 4(1)(b) of the Regulation 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.*'

Pursuant to Article 4(1)(b) of Regulation 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.

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.

Parts of documents n°1 to 25 and 27 to 52 have been blanked out, as they contain personal data of Commission staff or external parties, in particular, names, positions, contact details. A written indication thereof ('Protection of personal data') can be found on the right of the corresponding passages.

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 a version of the documents requested in which these personal data have been redacted.

c. Protection of commercial interests

Article 4(2), first indent of Regulation 1049/2001 provides that 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...unless there is an overriding public interest in disclosure.'*

Parts of documents n°21, 33, 38, 39, 40, 42 and 50 contain sensitive commercial information.

- Documents n°21 and 50 contain confidential comments from Facebook's on algorithms and advertisement. These comments were made during a non-public meeting with Commission services and disclosure of these passages could affect Facebook's business decisions.
- Document n°33 contains sensitive information that pertains to the tools that Facebook uses as part of its counter-terrorism efforts. Disclosure of the redacted passages could undermine these efforts and reveal the company's expertise.
- Documents n°38, 39, 40 and 42 contain non-public information regarding Facebook's policy and business strategies in terms of intellectual property protection. A disclosure could therefore undermine Facebook's commercial interests.

These passages can impact Facebook's business relations and harm the commercial interests of this company. They have been blanked out with a written indication 'protection of commercial interests' on the right of the document.

The exception laid down in the first indent of Article 4(2) of Regulation 1049/2001 applies, unless there is an overriding public interest in the disclosure of the documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of this document, but we have not been able to identify such an interest.

¹ Official Journal L 8 of 12.1.2001, p. 1. See also the judgment of 29 June 2010 in case C-28/08 P, *Commission/The Bavarian Lager Co. Ltd*, ECR 2010 I-06055

With respect to the aforementioned documents n°6-14, 19, 21, 24, 33, 35-36, 38-42, 44-45, 47, 50 and 52, these documents were drawn up for internal use under the responsibility of the relevant services of the DG Connect. It solely reflects the services' interpretation of the interventions made and does not contain 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.

Please note that documents n°1-5, 15-18, 22-23, 27-32, 34, 43, 46, 48-49 and 51 were received by the Commission from Facebook or Teneo Cabinet DN. These documents are disclosed for information only and cannot be re-used without the agreement of the originator. The documents do not reflect the position of the Commission and cannot be quoted as such.

3. POSSIBILITY OF CONFIRMATORY APPLICATION

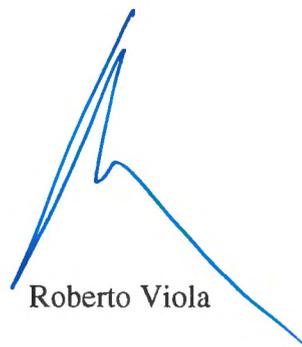
In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the above positions.

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 5/288
1049 Bruxelles
BELGIUM

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

Yours sincerely,



Roberto Viola

Enclosure(s): 53