



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,
CONNECT/R4

Ms Marlene Straub
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Unter den Linden 50
11011 Berlin
Germany

Advance copy via email:
ask+request-5920-46d5bd2a@asktheeu.org

REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents- Ref GestDem 2018/4823

Dear Ms Straub,

We refer to your e-mail dated 13/9/2018, in which you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ('Regulation 1049/2001'), registered on the same date under the above-mentioned reference number. We also refer to our email dated 4/10/2018, our reference Ares(2018)5101267, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATION

By your application you requested:

'documents which contain the following information:

- Briefing documents for Commissioner Gabriel's meetings with third parties, minutes, memos protocols or any form of documentation from such meetings, including audiovisual presentations and any material Commissioner Gabriel was given throughout, as well as any subsequent internal communication on the meetings. This definition is to be understood broadly, as covering any documentation of information.

- Briefing documents for Commissioner Gabriel's cabinet members' meetings with third parties, minutes, memos, protocols or any form of documentation from such meetings, including audiovisual presentations and any material Commissioner Gabriel's cabinet member was given throughout, as well as any subsequent internal communication on the meetings. This definition is to be understood broadly, as covering any documentation of information.

To allow for a prompt, efficient response, I would like to limit the temporal scope of this request to meetings dated between 1 January 2018 and 13 September 2018.

For the sake of clarity, I am referring to meetings listed at but not limited to <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=29935dac-3440-471f-b08e-c8fedd813724&d-6679426-p=1> (titled "Meetings of Commissioner Mariya Gabriel with organisations and self-employed individuals") and <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=9cf470f6-b423-4424-954b-839539dbf681&d-6679426-p=1> (titled "Meetings of Cabinet members of Commissioner Mariya Gabriel with organisations and self-employed individuals"). If meetings were held between Commissioner Gabriel/Commissioner Gabriel's cabinet and third parties within my given timeframe, which are not listed publicly for any reason, I would like to request that documentation (as defined above) be provided of these too.

In particular, I am interested in meetings covering the following subjects: Platforms/Online Platforms/Relations with Platforms, Startups, Evolution of the Public Sector Information directive, Illegal Content/Tackling Illegal Content Online, Disinformation/Disinformation Online, Safer Internet, Terrorist Content Online, Copyright/Copyright Enforcement/Copyright Proposals/Copyright Reform, TDM Directive, Communication Artificial Intelligence/Artificial Intelligence/AI, Hate speech, Data/Data and the impact of the e-privacy proposal on the news publishing industry/Open access to data and Code/Coding. If meetings have taken place, which touch upon these subjects but do not mention them in their description of subject, I would like to request documentation for those meetings too. Furthermore, I would like to request all described documentation, not limited to the subjects above, from Commissioner Gabriel's cabinet member Manuel Mateo-Goyet's third party meetings.'

On 4/10/2018, we proposed a fair solution (our reference Ares(2018)5101267) inviting you to narrow down the scope of your request (i.e. the subject matters, participants, timeframe), in order to reduce the amount of documents. In fact, according to our estimates and taking into account your parallel request GestDem 2018/4822 and other tasks that the concerned staff had to deal with during the same period and the limited human resources available, only documents relating to a maximum of 10 meetings could possibly be dealt with within the extended deadline. We provided you with a list of the meetings held between 1/1/2018 and 13/9/2018, indicating the dates, participants and topics. In case you were not able to specify the meetings, we proposed limiting your request to the documents on the 10 most recent meetings between Commissioner Gabriel and her Cabinet members with third parties.

In your response you stated: "My interest in the requested information is curiosity, and my right to access it as an EU citizen" and you explained that it was therefore difficult for you to narrow down your request to specific topics but that you would be happy to do so if you received a list of documents for all the meetings that took place. In this context, you referred to internal Commission guidance for fair solution proposals which states that a list of documents should be provided and an estimate of the working days needed

for dealing with the request. You then rejected our proposal to limit the scope of your request.

Given the huge number of meetings, providing a list of all documents on all 196 meetings of the Commissioner and cabinet members with third parties is not feasible within the statutory timeframe of an access-to-documents request.

Given your unavailability to narrow down the request by choosing topics and/or meeting dates, the Commission services started to identify the documents for the 10 most recent meetings. This requires the Commissioner’s cabinet and many units of the Commission services, to identify documents that possibly have been drafted for each meeting, to assess whether there are any interests to be protected under Article 4 of Regulation 1049/2011 including the assessment of whether rights of third parties and their commercial interests could be damaged if the documents were released. The administrative burden of this task is very high.

In line with the principles of sound financial management and good administration to which the Commission is bound to pursuant to Article 310(5) of the Treaty on the Functioning of the European Union, we are obliged to balance your possible interest in access against the workload resulting from the processing of your application. This is in line with the case law of the EU Courts¹. We have therefore restricted the scope of your application to what we could achieve, with the Commission’s scarce resources, in the given timeframe to the 10 most recent meetings.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

The following meetings are within the scope of the request after having been restricted as set out above:

Name	Date	Location	Entity/ies met	Subject(s)
Carl-Christian Buhr	07/09/2018	Brussels	Mastercard	AI and privacy
Manuel Mateo-Goyet	06/09/2018	Brussels	Eli Lilly and Company (Lilly)	eHealth
Carl-Christian Buhr	06/09/2018	Brussels	ERNIEAPP LTD (ERNIEAPP)	Personal data, Social platforms
Carl-Christian Buhr	05/09/2018	Brussels	Symantec Corporation (SYMC)	ePrivacy, Cybersecurity, AI
Manuel Mateo-Goyet	04/09/2018	Brussels	Google	Copyright

¹ Judgment of the Court of Justice of 2 October 2014 in case C-127/13, Strack v Commission, paragraphs 27-28.

Manuel Mateo-Goyet	04/09/2018	Brussels	Third-i bvba	E-Health
Carl-Christian Buhr	04/09/2018	Brussels	Confédération Européenne des Associations de Petites et Moyennes Entreprises (CEA-PME)	Presentation of the activities in relation to Commissioner's portfolio
Manuel Mateo-Goyet	03/09/2018	Brussels	Groupeement Européen des Sociétés d'Auteurs et Compositeurs (GESAC)	Copyright
Commissioner Gabriel	05/09/2018	Brussels	Motion Picture Association (MPA)	Copyright
Commissioner Gabriel	04/09/2018	Brussels	European Alliance of News Agencies (EANA)	Copyright

Within the given timeframe we were able to identify and assess the following documents related to the following meetings:

- Meeting with Mastercard (07-09-2018)

1. BTO Meeting Carl Buhr with Mastercard

- Meeting with Eli Lilly and Company (Lilly) (06-09-2018)

2. BTO Meeting CAB- Elli Lilly

- Meeting with ERNIEAPP LTD (06-09-2018)

3. BTO Meeting Carl Buhr, CAB Gabriel with CEO of Ernie App

- Meeting with Symantec Corporation (SYMC) (05-09-2018)

4. BTO Meeting between CAB Gabriel and Symantec
5. Briefing CaB Gabriel/662

- Meeting with Third-i bvba (04-09-2018)

6. BTO note meeting with Third-Ibvba/ MSD for Mothers-Maternal Health and Digital

7. Transformation through digital inventions-MSD for mothers
8. Equipping providers with digital tools to improve maternity care: Project iDeliver
9. Increasing access to family planning services: Nivi
10. Empowering providers with digital tools to deliver safer maternity care: Safe Delivery App
11. Providing women with the quality of care they deserve: Together for her health
- **Meeting with the German SME Association (04-09-2018)**
12. BTO Meeting Carl Buhr, CAB Gabriel, with the German SME Association (BVMW)
- **Meeting with Motion Picture Association (05-09-2018)**
13. Briefing/690- Digital in the next MFF
14. Briefing/691- Meeting with Charles Rifkin, CEO of Motion Picture Association (MPA)
15. Briefing for Commissioner Gabriel –Meeting with Charles Rivkin, CEO of Motion Picture Association
- **Meeting with European Alliances of news Agencies (EANA) (04-09-2018)**
16. Meeting request of 02.08.2018
17. Briefing/692- Commissaire Gabriel – réunion avec le collectif d'Agences de Presse
18. Position Paper AFP

Given the limited timeframe, we were not able to complete the verification on whether further documents exist and whether they can be made available.

3. ASSESSMENT UNDER REGULATION 1049/2001

Having assessed the identified documents under the provisions of Regulation 1049/2001 and taking into account the consultation of third parties, we have arrived at the conclusion that full disclosure can be granted for seven documents. Partial access can be granted to all other documents.

A. Full disclosure

Following an examination of Documents No 7, 8, 9, 10, 11, 14 and 18, we have arrived at the conclusion that full disclosure can be granted.

Please note that Document No 18 is publicly available via the following link:

https://www.afp.com/sites/default/files/2017-06-07_note_droits_voisins.pdf

Please note that Documents No 7, 8, 9, 10, 11 and 18 were received by the Commission from third parties. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on it. Such documents do not reflect the position of the Commission and cannot be quoted as such.

You may reuse Document No 14 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. Partial access with only personal data redacted

Parts of the Documents No 1, 4, 5, 6, 12, 13, 15, 16 and 17 contain personal data, in particular names, contact and other details and functions of the Commission staff or external staff.

Pursuant to Article 4(1)(b) 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 Union 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 data (hereinafter “Regulation 45/2001”)².

According to Article 8(b) Regulation 45/2001, personal data shall be transferred to recipients only 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 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 these documents in which the personal data have been redacted.

Please note that Document No 16 was received by the Commission from a third party. It is disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on it. It does not reflect the position of the Commission and cannot be quoted as such.

With regard to the documents produced by the Commission, you may reuse these documents 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 documents. Please note that the Commission does not assume liability stemming from the reuse.

With respect to documents containing minutes or summary records of meetings with third parties, please note that they were drawn up for internal use under the responsibility of the relevant officials of DG CONNECT. They solely reflect the authors' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer.

² Official Journal L8 of 12.1.2001,p.1 See also Judgment of the Court of Justice of the EU of the 29 June 2010 in case 28/08P, Commission/ The Bavarian Lager Co. LTD, ECR 2010 I-06055

C. Partial access based on Article 4(2) first indent of Regulation 1049/2001 (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.

Following an examination of Documents No 2 and 3 and taking into account the feedback received from the third party in relation to Documents No 3, we have arrived at the conclusion that parts of these documents contain sensitive commercial information.

Parts of the Document No 2 relate to information allowing conclusions on the strategy, potential partners and future actions of Eli Lilly. Disclosing this information would undermine the protection of its commercial interests.

Parts of Document No 3 contain substantial amount of sensitive business information as they pertain to Ernie App's go-to-market strategy and business model. Disclosure of this information would affect the company's commercial interests.

Based on the foregoing we consider that there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the commercial interests of the parties concerned.

The exceptions laid down in Articles 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, 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 disclosure but we have not been able to identify such interest.

Certain parts of these documents also contain names, contact details and functions of Commission staff or external staff. These constitute personal data that have been expunged for the reasons set out under Section 3B above.

You may reuse these documents 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 documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note also that these documents were drawn up for internal use under the responsibility of the relevant officials of DG CNECT. They solely reflect the authors' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer.

4. 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 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 (SG.C.1)
BERL 5/282
1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-Signed)
Roberto Viola

Enclosures: (18)