



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND  
TECHNOLOGY

The Director-General

Brussels, 10<sup>th</sup> May 2019  
CONNECT/R4

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Belgium

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**REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT**

**Subject: Your application for access to documents GestDem 2019/1355**

Dear Ms Kayali,

We refer to your application for access to documents dated 08/03/2019 and registered on the same date under the above-mentioned reference number. We also refer to our email dated 28/03/2019 (our reference Ares(2019)2207406), 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 requested access to:

*“For the period between November 2014 and March 2019:*

- List of lobby meetings held with your DG, with Microsoft or its intermediaries. The list should include: date, individuals attending + organisational affiliation, the issues discussed,*
- Minutes and other reports of these meetings*
- All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between your DG (including the Commissioner and the Cabinet) and Microsoft or any intermediaries representing its interests.*
- All documents prepared for the meetings and exchanged in the course of the meetings between both parties.”*

This access to documents request was one of 25 requests you submitted on 07/03/2019 to 15 Directorates-General, Directors-General, Commissioners and members of their Cabinet. The majority of these requests cover the same period, have an almost identical wording and cover the same categories of documents relating to lobby meetings with a number of companies and any intermediaries representing their interests.

Given the involvement of so many services in the Commission and the wide scope of your requests, on 26/03/2019 the Secretariat-General of the European Commission (hereinafter, 'the SG') contacted you with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001 ([Ares\(2019\)2103981](#)).

The SG asked you to specify the objective of your request and your specific interest in the documents requested<sup>1</sup>, and whether you could significantly narrow down the scope of your request, so as to reduce it to a more manageable amount of documents. It informed you of the various steps required for the handling of your numerous simultaneous requests, which involve the simultaneous work of multiple Commission services and Cabinets. It further informed that the search and analysis of the documents, together with the need to possibly consult the third parties concerned cannot be expected to be completed within the normal time-limits set out in Regulation 1049/2001.

With a view to reaching a fair solution concerning the handling of your request, the SG provided you with a list of lobby meetings published in the Transparency register<sup>2</sup>, which took place since 01/12/2014 between the services concerned and the relevant companies or any intermediaries representing their interests. Moreover, it provided you with three alternative options for limiting the excessive administrative burden relating to the handling of your requests: (a) restriction of the temporary scope to a period of your choice not exceeding six months and limitation of the scope only to meetings published in the Transparency Register; (b) limitation of the scope to 8 requests of your choice; (c) limitation of the scope of your requests to 15 meetings of your choice published in the Transparency Register.

In your reply to our fair solution proposal, which was received on 03/04/2019, you did not specify the objective of your request and your specific interests in the documents requested. Moreover, you do not accept any of the several fair solution proposals put forward by the SG to render the disproportionate administrative burden more manageable. Also, no alternative fair solution proposal was put forward. At the same time, you do not contest the administrative burden that the handling of your requests would entail.

For the reasons outlined above and given that we have to deliver what is possible within the time-limits outlined in Regulation 1049/2001 and given also the need to safeguard the interests of good administration, we see ourselves obliged to balance your possible interest in being granted access against the workload resulting from the processing of your application. This is in line with the case law of the EU Courts<sup>3</sup>.

In light of the above, we have proceeded to unilaterally restrict the scope of your application to the documents for which we considered that it can be dealt with within 30 working days counting from the date of registration of your application. Based on the information available we have not been able to identify any other conceivable way of dealing with your request.

Consequently, your application is understood to cover documents (briefings, minutes/reports, correspondence) relating to the meetings between the Commission and Microsoft listed in the Transparency Register, between 01/01/2017 and the date of your request.

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<sup>1</sup> Judgment of the Court of Justice of 2 October 2014, *Guido Strack v Commission*, C-127/13, EU:C:2014:2250, paragraph 28; Judgment of the Court of First Instance, of 22 May 2012, *EnBW Energie Baden-Württemberg v Commission*, T-344/08, EU:T:2012:242, paragraph 105.

<sup>2</sup> <http://ec.europa.eu/transparencyregister/public/homePage.do>

<sup>3</sup> Judgment of the Court of Justice of 2 October 2014 in case C-127/13, *Strack v Commission*, paragraphs 27-28.

## 2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

Within the statutory time limits foreseen by Regulation 1049/2001, DG CONNECT has been able to identify the following documents falling within the scope of your application:

**- Meeting between Carl-Christian Buhr, Cabinet member of Mariya Gabriel and Microsoft on 5/10/2017**

1. BTO meeting 5/10/2017

**- Meeting between Laure Chapuis and Juhan Lepassaar, Cabinet members of Andrus Ansip and Microsoft on 18/10/2017**

2. Meeting with Microsoft on ePrivacy

**- Meeting between Vice-President Andrus Ansip, Juhan Lepassaar, Cabinet members of Andrus Ansip and Microsoft on 15/02/2017**

3. Briefing Meeting\_Microsoft\_20170215

4. Meeting VP Ansip with Microsoft

**- Meeting between Commissioner Mariya Gabriel and Microsoft on 27/06/2018**

5. Briefing meetings Webit\_June2018

**- Meeting between Commissioner Mariya Gabriel and Microsoft on 31/05/2018**

6. Briefing Digital Economy Accelerator for Growth

**- Meeting between Vice-President Andrus Ansip, Mariya Gabriel and Microsoft on 09/01/2018**

7. Briefing for MG illegal content 9.1

8. Briefing for VP AA - Roundtable with CEOs of various online platforms

9. Annex 1

10. Annex 1bis

11. Annex 2

12. Annex 3

13. Short report illegal content 9 January

14. STATEMENT-18-63\_EN

15. Notes of afternoon meeting on illegal content on 9.1

16. Notes of the roundtable IR

17. Notes of the roundtable

### 3. ASSESSMENT UNDER REGULATION 1049/2001

Having examined these documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that full access can be given to two documents whereas partial access can be granted to nine documents. Access must be refused for six documents since an exception under Article 4 of the Regulation applies.

#### a. Full access

Please find enclosed a copy of document 11 and 14.

Document 11 is an internal, preparatory document for a meeting, which is part of a briefing (see documents 7 and 8). It does not reflect the position of the Commission and cannot be quoted as such.

Please note that document 14 is also publicly available via the following link: [http://europa.eu/rapid/press-release\\_STATEMENT-18-63\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-18-63_en.htm)

You may reuse document 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. Protection of privacy and integrity of the individual

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 European Union legislation regarding the protection of personal data’*.

The applicable EU 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 agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (‘Regulation 2018/1725’).

Parts of documents 1-8, 10 and 12 contain personal data (names, contact details and handwritten signatures) of Commission staff or third parties.

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.<sup>4</sup>

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

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*

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<sup>4</sup> 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](https://eur-lex.europa.eu/eli/jud_2017/994).

*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'.*

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.

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, the above-mentioned parts of documents 1-8 and 12 have been blanked out. A written indication thereof ('personal data') can be found next to the corresponding passages.

With respect to document 10, which contains the CVs of representatives of companies invited to the meeting on illegal content on 09/01/2019, the remaining parts of the document after all personal data have been redacted would be meaningless. Therefore, access to this document must be refused<sup>5</sup>.

### **c. Protection of the ongoing decision-making process**

The second subparagraph of Article 4(3) of Regulation 1049/2001 provides that 'access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

Documents 12, 13, 15, 16 and 17 contain information about discussions between the Commission and the companies with regard to illegal content. The meeting to which these documents relate was held on 09/01/2018 under the "Chatham House" rules, meaning that neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed. This particular rule was agreed in order to allow a free exchange of views between the Commission and the involved companies on a sensitive topic (illegal content).

Disclosing these passages would not only reveal the options under consideration by all actors and their opinions on these measures, it would also enable the general public to identify the authors of these statements. This would harm the Commission's efforts for building constructive and open working relationships with these companies, who would most

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<sup>5</sup> See Judgment of the Court of first Instance of 12 July 2001 in case T-204/99, *Mattila v Council and Commission*, para. 69

probably refuse to participate in future meetings held under the “Chatham House” rule or, at least, refrain from expressing their point of view openly.

The Commission’s decision-making process would be harmed without the possibility to obtain the industry’s point of view. The companies would also be less likely to engage into a constructive dialogue with the Commission in order to agree on a self-regulatory approach.

The risk of harming the future decision-making process by disclosing these documents is therefore real and non-hypothetical.

The exception laid down in the first indent of Article 4(3) of Regulation 1049/2001 apply, 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.

Considering the above, the corresponding passages of document 12 have been redacted with a written indication ‘decision-making process’ on the right of the document.

We have further considered whether partial access to documents 13, 15, 16 and 17 could be given. However, the remaining passages after having redacted all sensitive parts harming the decision-making process would be meaningless. Access to these documents must therefore be refused.

\* \* \*

Documents 1, 2 and 4 were drawn up for internal use under the responsibility of the relevant services of the DG CONNECT and the Vice-President’s and Commissioner’s Cabinets. They solely reflect the services’ interpretation of the interventions made and do not set out any official position of the third parties to which the document refer, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 3, 5-8 and 12 are internal, preparatory documents for meetings which do not reflect the position of the Commission and cannot be quoted as such.

#### **d. Out of scope**

With respect to document 9, this document contains a list and description of all companies which were invited to the meeting of 09/01/2019 on illegal content. The remaining parts of the document after redaction of parts which do not fall within the scope of your request would be meaningless. Therefore, access to this document is refused<sup>6</sup>.

### **4. 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.

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<sup>6</sup> See Judgment of the Court of first Instance of 12 July 2001 in case T-204/99, *Mattila v Council and Commission*, para. 69

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  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

P.O. Claire Bury  
(e-Signed)

Roberto Viola

Enclosures: 11