



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES

The Director-General

Brussels, 08.06.2020
GROW/B2/DG/mr (2020) 3342064

Mr Robert Gorwa
Alexander von Humboldt Institut
für Internet und Gesellschaft
Französische Straße 9
10117 Berlin
Germany

E-mail:
ask+request-7872-1cd6100c@asktheeu.org

Subject: Your application for access to documents – Ref. GestDem 2020/2274

Dear Mr Gorwa,

I refer to your request for access to documents of 20 April 2020, registered on the same day, in line with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (“Regulation 1049/2001”).

You request access to the following documents in relation to notification 2017/127/D (“Act improving law enforcement on social networks”) that was notified in the framework of Directive (EU) 2015/1535²:

“1. the comments issued by Italy and Sweden

2. the draft law assessment on 2017/127/D put together by JUST and CNECT, and shared internally between JUST and CNECT via email on 23 May 2017 [potential reference number: Ares(2017)5237754]

3. any other analysis, commentary or opinions on the notification 2017/127/D from the Legal Service, DG CNECT, DG GROW, DG JUST, or other DGs, including draft reports, memos, or other documents.”

As you were informed, your request was split between the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) under GestDem 2020/2274, the Directorate-General for Communications Networks, Content and Technology (DG CNECT) under GestDem 2020/3305, the Directorate-General for

¹ 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, OJ L 145, 31.5.2001, p. 43.

² Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241 of 17.9.2015, p.1

Justice and Consumers (DG JUST) under GestDem 2020/3306, and the Legal Service (LS) under GestDem 2020/3307. Please note that DG GROW will handle the parts of your request that are marked above in bold (point 3 is handled by all the DGs referred to in this paragraph), and that this reply covers only documents held by DG GROW. We consider your request to cover documents held up to the date of your application.

We take note that in your request you state that *“in case that documents should be classified or cannot be released because of exceptions of special treatment, I am asking for the name, source (e.g. the institution, DG and unit) and any reference number of these documents.”* Furthermore, the split of which you have been informed above also takes into account the following part of your request in which you state *“[i]f information under the scope of regulation 1049/2001 is not held by DG GROW but by the Commission, the Commissioner or another DG or Commission unit, I would like this information to be included in this request.”*

As a result, the documents held by DG GROW relevant for your request are listed and numbered below, in accordance with the three points of your request:

Request on point 1.:

- (1) Comments of Italy on notification 2017/127/D of 26 June 2017 made under Article 5(2) of Directive (EU) 2015/1535 addressed to German authorities;**
- (2) Comments of Sweden on notification 2017/127/D of 28 June 2017 made under Article 5(2) of Directive (EU) 2015/1535 addressed to German authorities;**

Request on point 2.:

N/A

Request on point 3.:

- (3) Response of Germany of 24 July 2017 to Comments of Italy and Sweden on notification 2017/127/D made under Article 5(2) of Directive (EU) 2015/1535 addressed to German authorities;**
- (4) E-mail of 31 March 2017 including the preliminary consultation of DG GROW to the Commission's services on notification 2017/127/D;**
- (5) E-mail of 3 April 2017 from DG GROW informing the Commission's hierarchy on notification 2017/127/D;**
- (6) E-mail reply of 12 April 2017 on position of Commission's services to the preliminary consultation by DG GROW;**
- (7) E-mail reply of 4 May 2017 on position of Commission's services to the preliminary consultation by DG GROW;**
- (8) Briefing of 8 June 2017 for meeting between Cabinet Bieńkowska and Facebook;**

(9) Minutes of meeting between Cabinet Bieńkowska and Facebook on 12 June 2017;

(10) Letter of Commissioner Bieńkowska to Mrs Nicola Beer of 19 July 2017.

Following a review and assessment of your request and of the associated documents, I am pleased to inform you that:

- Full access is granted to documents 1, 2 and 3;
- Wide partial access, subject only to redaction of personal data, is granted to documents 4, 6, 7, 9 and 10;
- Partial access, subject to redaction of personal data and information pertaining to the Commission's internal decision-making process, is granted to documents 5 and 8.

With regards to documents 1, 2 and 3, following the agreement to the disclosure by Italy, Sweden and Germany, we consider that full access to the requested documents can be granted. The documents issued by Italy, Sweden and Germany are disclosed for information only and cannot be re-used without the agreement of the originators, who hold copyright on them. These documents do not reflect the position of the Commission and cannot be quoted as such.

Having examined documents 4, 5, 6, 7, 8, 9 and 10 pursuant to Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, I am pleased to inform you that these documents are disclosed under the modalities described below. These documents originate from the European Commission and you may reuse them free of charge for non-commercial and commercial purposes provided that the source is acknowledged and 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 reuse³.

Please note that parts of documents 8 and 9 fall outside the scope of your request as they refer to issues under discussion at the time, which do not concern the transparency procedure regarding notification 2017/127/D under Directive 2015/1535. Please also note that these documents were drawn up for internal use under the responsibility of the relevant services of DG GROW. 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 documents refer, which were not consulted on their content.

Protection of privacy and the integrity of the individual

With regard to documents 4, 5, 6, 7, 8, 9 and 10 listed above, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and

³ See the Decision of the Commission of 12 December 2011 (2011/833/EU), OJ L 330/39 of 14 December 2011 for details; this Decision does not apply to documents for which third parties hold the copyrights, Article 2(2)(b).

the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;
- handwritten signatures/abbreviated signatures of natural persons;
- other information relating to an identified or identifiable natural person.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, 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 disclosure of the personal data concerned.

Protection of the decision-making process

Documents 5 and 8 have been expunged of certain information the disclosure of which is prevented by the exception to the right of access laid down in Article 4(3) second paragraph of Regulation (EC) 1049/2001.

Article 4(3) second paragraph of Regulation 1049/2001 provides that "[a]ccess 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".

The expunged parts of documents 5 and 8, contain opinions for internal use that form part of deliberations and preliminary consultations between the Commission's services concerning their position regarding notification 2017/127/D. The Commission did not finally react to the notification.

Disclosure of these opinions for internal use, exchanged between Commission services' staff as part of preliminary consultations, would seriously affect the decision-making process within the Commission, as the latter's staff would no longer be able to freely exchange views and advice in order to allow the Commission to take a position on a sensitive draft notified under Directive (EU) 2015/1535.

The exceptions laid down in Article 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the document. However, in this case, the information provided by you does not show that the public interest in making the content of the requested documents public would outweigh the harm that disclosure would cause to the interests protected by the invoked exception.

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)

Kerstin Jorna
Director-General

Enclosures:

- Document 1: Comments of Italy on notification 2017/127/D of 26 June 2017 made under Article 5(2) of Directive (EU) 2015/1535 addressed to German authorities.
- Document 2: Comments of Sweden on notification 2017/127/D of 28 June 2017 made under Article 5(2) of Directive (EU) 2015/1535 addressed to German authorities.
- Document 3: Response of Germany of 24 July 2017 to Comments of Italy and Sweden on notification 2017/127/D made under Article 5(2) of Directive (EU) 2015/1535 addressed to German authorities. EN version.
- Document 3: Response of Germany of 24 July 2017 to Comments of Italy and Sweden on notification 2017/127/D made under Article 5(2) of Directive (EU) 2015/1535 addressed to German authorities. DE version.
- Document 4: E-mail of 31 March 2017 including the preliminary consultation of DG GROW to the Commission's services on notification 2017/127/D.
- Document 5: E-mail of 3 April 2017 from DG GROW informing the Commission's hierarchy on notification 2017/127/D.
- Document 6: E-mail reply of 12 April 2017 on position of Commission's services to the preliminary consultation by DG GROW.
- Document 7: E-mail reply of 4 May 2017 on position of Commission's services to the preliminary consultation by DG GROW.
- Document 8: Mini Briefing Note of 8 June 2017 prepared for a meeting with Facebook.

- Document 9: Minutes of meeting between Cabinet Bieńkowska and Facebook on 12 June 2017.
- Document 10: Letter of Commissioner Bieńkowska to Mrs Nicola Beer of 19 July 2017.