



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

Directorate R - Resources, Information and Policy Coordination
Transparency, Civil Society and Communication

Brussels
TRADE.R.3/MM

***By registered letter with
acknowledgment of receipt***

Ms **Melissa Heikkilä**
POLITICO
Rue de la Loi 62
1040 Brussels
Belgium

Advance copy by email:
ask+request-8262-
08ee8383@asktheeu.org

Dear Madam,

I refer to your email of 29 June 2020 in which you make a request for access to documents under Regulation (EC) No 1049/2001 ("Regulation 1049/2001"), and which was registered on the 30 June under the reference GestDem No 2020/3942.

1. SCOPE OF YOUR REQUEST

In your request, you asked for access to

All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, and minutes/notes) relating to the meetings listed below, up to the current date of 29 June 2020.

- 1. 24/01/2020 between Commissioner Paolo Gentiloni and Facebook Ireland Limited*
- 2. 23/01/2020 between Commissioner Paolo Gentiloni and Booking.com B.V.*
- 3. 23/01/2020 between Commissioners Paolo Gentiloni, Phil Hogan and Apple Inc.*
- 4. 07/05/2020 video conference between Commissioner Phil Hogan and Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e. V.*
- 5. 29/04/2020 video conference between Commissioner Phil Hogan and American Chamber of Commerce to the European Union*

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

6. 05/03/2020 between Commissioner Phil Hogan and ITI - The Information Technology Industry Council
7. 05/03/2020 between Commissioner Phil Hogan and American Chamber of Commerce to the European Union
8. 04/02/2020 between Commissioner Phil Hogan and DIGITALEUROPE

As your request concerns the meetings of 2 Commissioners it was split between DG TAXUD (1-3) and DG TRADE (4-8). This reply answers your application as regards meetings quoted under numbers from 4 to 8 of the above list. The part of your request related to meetings quoted under point 1-3 will be handled by DG TAXUD.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law², when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001. Such assessment is carried out in a multi-step approach:

- first, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception;
- second, it must examine whether disclosure of the parts of the document in question pose a "*reasonably foreseeable and not purely hypothetical*" risk of undermining the protection of the interest covered by the exception;
- third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Article 4(2) and Article 4(3) of Regulation 1049/2001, the institution is required "*to ascertain whether there is any overriding public interest justifying disclosure*"³.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents⁴, '*the exceptions to that right [...] must be interpreted and applied strictly*'⁵.

In reply to your request, I can inform you that we have identified **5 documents** that fall within the scope of your request.

1. Report from videoconference with Bitcom on 7 May 2020 - Ares(2020)3551841
2. Commissioner P. Hogan speech at video conference with American Chamber of Commerce to the European Union on 29/04/2020 - Ares(2020)4222852
3. Report from the meeting between Commissioner P. Hogan and ITI - Ares(2020)3512215
4. Commissioner P. Hogan speech at the Transatlantic Conference of the American Chamber of Commerce to Ireland on 5 March 2020 - Ares(2020)3918890

² Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

³ *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52-64.

⁴ See Regulation 1049/2001, recital (4).

⁵ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

5. Commissioner P. Hogan Video Message for DigitalEurope Event “Masters of Digital 2020 - A Digitally Transformed European Society”- Ares(2020)3918996

As regards document 4, we understand this is the document you are requesting under point 5, noting that the speech was given to the American Chamber of Commerce Ireland, not the American Chamber of Commerce to the EU. Having examined the identified documents under the applicable legal framework, I am pleased to grant you full access to **document 2, 4 and 5** and partial access to **documents 1 and 3** where only names and other personal data have been redacted pursuant to article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 2018/1725. Hence, the main content of these documents relevant to your request is accessible.

Copies of the accessible documents are enclosed to this letter.

The reasons justifying the application of the exception concerning personal data are set out below.

Protection of the 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.⁶

Document 1 and 3 contain personal information, such as names, e-mail addresses, telephone numbers that allow the identification of natural persons, as well as other personal information.

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.⁷ Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.⁸

⁶ The applicable legislation 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’).

⁷ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, Peter Novak v Data Protection Commissioner, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

⁸ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, ECLI:EU:T:2018:560.

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁹, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable¹⁰

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 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 2018/1725, can the transmission of personal data occur.

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 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 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, I conclude that, pursuant to Article 4(1)(b) of Regulation 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 disclosure of the personal data concerned.

However, in line with the Commission’s commitment to ensure transparency and accountability, the names of the Members of Cabinet and the names of the senior management of the Commission are disclosed.

⁹ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

¹⁰ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

3. MEANS OF REDRESS

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:

Secretary-General
European Commission
Transparency, Document Management & Access to Documents
Rue de la Loi 200/Wetstraat 200
BERL 7/76
1049 Brussels
Belgium

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

Yours faithfully,

(e-signed)

Michelangelo MARGHERITA
Head of Unit

Enclosure: Disclosed documents