



## EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director-General

Brussels  
CONNECT/R.4

Mr Max Bank  
LobbyControl  
Am Justizzentrum 7  
50939 Köln  
GERMANY

*Advance copy by email:*

[ask+request-8357-114906d8@asktheeu.org](mailto:ask+request-8357-114906d8@asktheeu.org)

### **REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT**

**Subject: Your application for access to documents – GestDem 2020/4274**

Dear Mr Bank,

I refer to your 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<sup>1</sup> (hereinafter 'Regulation 1049/2001'), introduced via email on 14 July 2020, registered on the same date under the abovementioned reference number.

Furthermore, I refer to our acknowledgment receipt provided to you on 14 July 2020, our reference Ares(2020)3708405, and to our holding replies of 5 August 2020, Ares(2020)4117032 and 27 August 2020, Ares(2020)4460817.

Please note that due to the wide scope of your request, covering also areas falling under the responsibility of different Directorates-General, parts of your request have been attributed to other Directorates-General<sup>2</sup> and are answered directly by them. The present reply relates only to the documents originating in the Directorate-General for Communications Networks, Content and Technology ('DG CONNECT'). You have received or will receive the replies from the other respective Directorates-General in due course.

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<sup>1</sup> Official Journal OJ L 145, 31.5.2001, p. 43.

<sup>2</sup> GestDem 2020/5194: DG GROW; GestDem 2020/5195: DG SANTE; GestDem 2020/5197: DG ENER.

## 1. SCOPE OF YOUR APPLICATION

By your application, you request access to the following:

*'All documents – including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations, correspondence (i.e. any emails, correspondence, telephone call notes, and/or text messages including WhatsApp exchanges) – related to the following meetings Commissioner Breton and members of his Cabinet have held with interest representatives since 01 March 2020;*

20/04/2020

Video Conference

*Associazione Nazionale Costruttori Edili (ANCE) CAISSE DES DEPOTS (CDC) Koninklijke Vereniging MKB-Nederland (MKB-Nederland) Wienerberger AG European Construction Industry Federation (FIEC) Compagnie de SAINT-GOBAIN Construction Products Europe European Builders Confederation AISBL (EBC)*

20/04/2020

video conference

*ArcelorMittal (AM)*

*European Plastics Converters Association (EuPC) HeidelbergCement (HC) Minafin Group CEMBUREAU - The European Cement Association (CEMBUREAU) Eni S.p.A. FuelsEurope (FuelsEurope)*

*The European Steel Association (EUROFER) European Chemical Industry Council (Cefic) MOL Hungarian Oil and Gas Company (MOL Group)*

11/05/2020

Videoconference

*Telefonica, S.A.*

08/05/2020

Videoconference

*European Coordination Committee of the Radiological, Electromedical and healthcare IT Industry (COCIR) MedTech Europe (MTE) European Federation of Pharmaceutical Industries and Associations (EFPIA) Association of the European Self-Care Industry (AESGP) Vaccines Europe (VE) European Confederation of Pharmaceutical Entrepreneurs (EUCOPE)*

07/05/2020

Videoconference

*Nestlé S.A. (Nestlé (SIX: NESN))*

*Mondelez Europe GmbH (MDLZ)*

*FoodDrinkEurope (FoodDrinkEurope)*

05/05/2020

videoconference

*OVH*

05/05/2020

Videoconference

*European Utilities Telecom Council (EUTC)*

04/05/2020

*Videoconference*

*ENEL SpA*

*Ørsted A/S*

*Akuo Energy*

*Hydrogen Europe (HE)*

*Siemens Gamesa Renewable Energy (SGRE)*

30/04/2020

*Videoconference*

*European Digital Rights (EDRi)*

30/04/2020

*videoconference*

*Fnac Darty*

*PostNL Holding B.V. (PostNL)*

*Bolt*

*Allegro.pl sp. z o.o. (Allegro.pl)*

*GlovoApp23, S.L. (Glovo)*

*Ahold Delhaize*

*Zalando SE*

29/04/2020

*Videoconference*

*European Coordination Committee of the Radiological, Electromedical and healthcare IT Industry (COCIR) MedTech Europe (MTE) European Federation of Pharmaceutical Industries and Associations (EFPIA) Association of the European Self-Care Industry (AESGP) Vaccines Europe (VE) European Confederation of Pharmaceutical Entrepreneurs (EUCOPE) MEDICINES FOR EUROPE (-)*

28/04/2020

*Videoconference*

*American Chamber of Commerce to the European Union (AmCham EU)*

25/05/2020

*Videoconference*

*SANOFI*

18/05/2020

*videoconference*

*Dompé farmaceutici spa*

11/05/2020

*Videoconference*

*Minafin Group*

*Covestro AG*

*BASF SE*

*Shell Companies (Shell)*

*EVONIK INDUSTRIES AG*

*SABIC International Holdings B.V. (SABIC) Dow Europe GmbH (Dow) ExxonMobil Petroleum & Chemical (EMPC) European Chemical Industry Council (Cefic)'*

The meetings falling within the remit of DG CONNECT are the following:

- (1) 11/05/2020 – videoconference – Telefonica, S.A.
- (2) 05/05/2020 – videoconference – European Utilities Telecom Council (EUTC)
- (3) 05/05/2020 – videoconference – OVH
- (4) 30/04/2020 – videoconference – European Digital Rights (EDRi)
- (5) 30/04/2020 – videoconference – Fnac Darty, PostNL Holding B.V. (PostNL), Bolt, Allegro.pl sp. z o.o. (Allegro.pl), GlovoApp23, S.L. (Glovo), Ahold Delhaize, Zalando SE

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

We have identified the following documents as falling within the scope of your request:

- With regard to the videoconference of 05/05/2020 with OVH:
  - Briefing: Entretien entre le Commissaire Thierry Breton et OVH on ‘cloud’, Brussels, 5 May 2020 (**Annex 1**)
- With regard to the videoconference of 30/04/2020 with European Digital Rights (EDRi):
  - Briefing: Meeting with EDRi, (**Annex 2**)
  - Email: [EDRi and Access Now, civil society] Request for meeting\_1, (**Annex 3**)
  - Email: [EDRi and Access Now, civil society] Request for meeting\_2, (**Annex 4**)
  - Paper: European Digital Rights (EDRi), (**Annex 5**)
  - Paper: Access Now: The European human rights agenda in the digital age (**Annex 6**)
- With regard to the videoconference of 30/04/2020 with Fnac Darty, PostNL Holding B.V. (PostNL), Bolt, Allegro.pl sp. z o.o. (Allegro.pl), GlovoApp23, S.L. (Glovo), Ahold Delhaize, Zalando SE:
  - Back To Office (BTO) Report: Video-conference with large European eCommerce platform companies (COVID-19 pandemic Structured Engagement with Industry), 30 April 2020 (**Annex 7**)

With regard to a) the videoconference of 11/05/2020 with Telefonica, S.A. and b) the videoconference of 05/05/2020 with EUTC, we regret to inform you that the Commission does not hold any documents that would correspond to the description given in your application.

## 3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001 and taking into account the opinion of the third parties we have arrived at the conclusion that they can be partially disclosed. Disclosure of some parts of the documents is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) *Protection of the privacy and integrity of the individual*

Full disclosure of Annexes 1-7 is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, since they contain the following personal data:

- the names and contact details of Commission staff members not pertaining to the senior management;
- the names, functions, CV and contact details of other natural persons;
- other information relating to an identified or identifiable natural person, i.e. photos and personal opinions.

Article 9(1)(b) of the Data Protection Regulation<sup>3</sup> 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 did not express any particular interest to have access to these personal data nor did you put forward any 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 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.

*(ii) 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.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Parts of Annex 1 contain commercially sensitive, non-public information relating to the concerned third party's positions and activities.

Parts of Annex 7 also contain commercially sensitive information relating to the concerned third parties' views, positions and activities.

Disclosure of these parts of the documents would seriously undermine the third parties' commercial interests.

*(iii) Protection of the decision-making process*

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that '[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which

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<sup>3</sup> Regulation (EU) 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, OJ L 295, 21.11.2018, p. 39.

relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

The second subparagraph of Article 4(3) 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.'

Annex 1 contains parts covered by the aforementioned exception of Article 4(3) first subparagraph. In particular, they relate to matters where the decision has not been taken by the Commission yet. Disclosure of these parts would seriously undermine the protection of the ongoing decision-making process.

Annex 1 contains also parts, which are covered by the aforementioned exception of Article 4(3) second subparagraph. This document is a briefing prepared for the respective meeting. Parts of this briefing contain preliminary views and reflections, which were under consideration at that time. Disclosure of these parts of the document would seriously undermine the Commission's functioning and internal decision-making process and deter Commission services and officials from putting forward their views and without being unduly influenced by the prospect of wide disclosure exposing the Commission.

Consequently, the above-mentioned parts of Annex 1 have been blanked out.

#### **4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Articles 4(2) and 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of 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 the aforementioned parts of the documents but we have not been able to identify such an interest.

#### **5. REUSE OF DOCUMENTS**

Annexes 1-2 and 7 were drawn up for internal use under the responsibility of the relevant services. 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. They do not reflect the position of the Commission and cannot be quoted as such. You may reuse these documents, which have been produced by the Commission free of charge and 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 reuse.

Annexes 3-6 originate from third parties. Please note that they are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

## **6. 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 Secretariat-General of the Commission at the following address:

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
1049 Brussels  
BELGIUM

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

Yours sincerely,

(e-Signed)

Roberto Viola

Enclosures: (7)