



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director-General

Brussels
CNECT/RV

Ms Myriam Douo
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Advance copy via email:

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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents- Ref GestDem 2020/4518

Dear Ms Douo,

We refer to your email dated 14 July 2020 wherein 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 (hereinafter 'Regulation 1049/2001'), registered under the abovementioned reference number. We also refer to our holding reply, dated 6 August 2020, our reference Ares(2020)4138767, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) scope of your application

By your application, you requested access to:

' [...]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 [...]'

In your request you also provide a list of the twenty meetings you are interested in.

Due to the scope of your request, covering also areas falling under the responsibility of other Directorates-General, your request has been split between:

a) Directorate-General for Communications Networks, Content and Technology (DG CONNECT), under reference number GestDem 2020/4518,

- b) Directorate–General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW), under reference number GestDem 2020/4293 and
- c) Directorate–General for Health and Food Safety (DG SANTE), under reference number GestDem 2020/4438.

This reply relates only to the reference number GestDem 2020/4518.

You receive separate replies related to GestDem 2020/4293 and GestDem 2020/4438 from the other respective Directorates-General.

1. DOCUMENT FALLING WITHIN THE SCOPE OF THE REQUEST

The following meetings and relevant documents have been identified as falling within the scope of GestDem 2020/4518:

A) Meeting (videoconference) of 3 April 2020 with France Télévisions, EBU-UER (European Broadcasting Union), Mediaset Italia S.p.A., European Producers Club (EPC) and Union Internationale des Cinémas (UNIC)

Document 1 – Email of 1 April 2020 - Invitation (*to Morenafilms*) to a virtual meeting with Commissioner Thierry Breton - Friday 3rd of April at 14:00

Document 2 – Email of 1 April 2020 - Invitation (*to Kinopolis*) to a virtual meeting with Commissioner Thierry Breton - Friday 3rd of April at 14:00

Document 3 – Email of 1 April 2020 - Invitation (*to Mediaset*) to a virtual meeting with Commissioner Thierry Breton - Friday 3rd of April at 14:00

Document 4 – Email of 1 April 2020 - Invitation (*to IFCIC*) to a virtual meeting with Commissioner Thierry Breton - Friday 3rd of April at 14:00

Document 5 – Email of 1 April 2020 - Invitation (*to Betafilm*) to a virtual meeting with Commissioner Thierry Breton - Friday 3rd of April at 14:00

Document 6 – Briefing COVID-19 pandemic - Structured Engagement with Industry – AUDIOVISUAL

Document 7 – Emails of 2 and 6 April 2020 - Video conference 03/04/2020 - Impacts of the COVID-19 pandemic on audiovisual and media sector

Document 8 – Email of 6 April 2020 - Conference call Commissioner Breton representatives AV industry: main points

B) Meeting (videoconference) of 6 April 2020 with the European Coordination Committee of the Radiological, Electromedical and healthcare IT Industry (COCIR), Koninklijke Philips (Philips), Siemens Healthineers AG (SHS), Byteflies and SANOFI

Document 9 - Email of 3 April 2020 – Impacts of the COVID-19 pandemic on the eHealth sector

Document 10 - Briefing for the Call with European eHealth companies/sector organisations - 6 April 2020

Document 11 - Note of an audio meeting between Commissioner Breton and eHealth Stakeholders, 6 April 2020

C) Meeting (videoconference) of 17 April 2020 with World Association of Newspapers and News Publishers (WAN-IFRA), European Federation of Journalists (EFJ), European Newspaper Publishers' Association (ENPA), News Media Europe (NME), Schibsted ASA, VÖP - Verband

Österreichischer Privatsender (VÖP), European Magazine Media Association (EMMA)

Document 12 – COVID-19 pandemic - Structured Engagement with Industry - NEWS MEDIA

Document 13 – Email of 17 April 2020 - BTO - VC with the news media industry

D) Meeting (videoconference) of 21 April 2020 with France Télévisions, European Broadcasting Union (EBU-UER), Mediaset Italia S.p.A., European Producers Club (EPC)

Document 14 - Minutes of the follow up video conference with the audiovisual ecosystem

E) Meeting (videoconference) of 28 April 2020 with Alliance de la Presse d'Information Générale.

Document 15 – Email exchanges of 21 January 2020 and 6 April 2020 and their attachments:

Document 16 – Letter from Alliance de la Presse d'Information Générale to Commissioner Breton, dated 21 January 2020, attached to the email of the same date.

Document 17 – Déclaration commune de l'Alliance de la presse d'information générale et de la Bundesverband Deutscher Zeitungsverleger e.V., dated 29 September 2019, attached to the email of 6 April 2020.

Document 18 – Downsize market dominance and enable fair competition- Regulation of market dominant platforms, ENPA- EMMA, attached to the email of 6 April 2020.

Document 19 – Email of 14 February 2020

Document 20 – Briefing - Commissioner Breton meeting Alliance de la presse d'information générale, Bruxelles, 28/04/2020, 15:00

2. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that partial access can be granted to 19 documents and access is denied for one document as disclosure of these parts is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Partial disclosure

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 1-15 and 17-20 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- Names, initials, functions and contact information of Commission staff members not pertaining to the senior management
- Names, functions, contact and CV details of other natural persons

Article 9(1)(b) of the Data Protection Regulation¹ 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 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) 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.

Part of Document 12 contains confidential and business sensitive information relating to the concerned third party's plans and activities. Disclosure of this part of the document would seriously undermine the third party's commercial interests.

Parts of Document 13 report positions and commercial business information of third parties. As we could not obtain the views of the concerned third parties about a potential disclosure, after assessment we have arrived at the conclusion that disclosure of these parts could adversely affect their commercial interests.

Consequently, the above-mentioned parts of Documents 12 and 13 have been blanked out.

(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 the an institution, which 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.'

¹ 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.

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.’

Documents 12 and 20 contain 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 (VAT exemption, EU and Commission actions and contribution to tackle the impact of the COVID-19 pandemic to the news media sector and ensure the sustainability of the sector, ePrivacy Regulation). Disclosure of these parts would seriously undermine the protection of the ongoing decision-making process.

Parts of Documents 6 and 12 are covered by the aforementioned exception of Article 4(3) second subparagraph, since they contain preliminary views and reflections, which were under consideration at that time. Disclosure of these parts of the documents would seriously undermine the Commission’s functioning and internal decision-making process and deter Commission services and officials from putting forward their views without being unduly influenced by the prospect of wide disclosure exposing the Commission.

Consequently, the above-mentioned parts of Document 6, 12 and 20 have been blanked out.

B. Non-disclosure

We regret to inform you that access to Document 16 cannot be granted as disclosure is prevented by the exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

The abovementioned document originates from a third party and contains information relating to the third party’s positions and views. Since we could not obtain the views of the third party concerned about the potential disclosure, after assessment we have arrived at the conclusion that disclosure of this document would undermine the third party’s commercial interests and therefore access has to be denied under the exception of Article 4(2) first indent of Regulation 1049/2001.

Moreover, parts of this document contain personal data, in particular the names, functions, contact details of natural persons and handwritten signatures, thus their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section A(i).

We have considered whether partial access could be granted to this document. However, partial access is not possible considering that the document is covered in its entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) and Article 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 document but we have not been able to identify such an interest.

4. REUSE OF DOCUMENTS

You may reuse Documents 1-14, 20 and the parts of Documents 15 and 19, which have been produced by the European 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.

Please note that Documents 6, 8, 10, 11-14 and 20 were drawn up for internal use under the responsibility of the relevant services of DG CONNECT. 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.

Documents 17 and 18 and parts of the Documents 15 and 19 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.

5. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation (EC) No 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
B-1049 Bruxelles or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-Signed)
Roberto Viola

Enclosures:(19)