



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

The Director-General

Brussels
CNECT.R.4

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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your request for access to documents, GestDem 2020/6930

Dear Mr Fanta,

We refer to your e-mail of 13 November 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 4 December 2020, our reference Ares(2020)7334341, 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 1049/2001.

1. SCOPE OF YOUR APPLICATION

By your application, you requested access to the following:

'- All documents regarding yesterday's video meeting between Commissioner Thierry Breton and Sundar Pichai of Google. This should include e-mails, meeting minutes and other documents, also including communication in more ephemeral form such as WhatsApp messages, etc.'

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Meeting request – Sundar Pichai, CEO of Google and Alphabet, 13 October 2020 (our ref. Ares(2020)5442667) (**Document 1**)
- Briefing – Meeting with Sundar Pichai, CEO of Google and Alphabet (**Document 2**)
- Read-out videoconference Thierry Breton and Sundar Pichai (our ref. Ares(2020)6875601) (**Document 3**)

3. 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 all three documents identified. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001. Please note that parts of Document 2 have also been blanked out as being outside the scope of the request.

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 1, 2 and 3 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:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- Names, functions and contact information 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 public interest as regards international relations

Parts of Document 2 are covered by the exception to the right of access laid down in Article 4(1)(a), third indent of Regulation 1049/2001 which refers to ‘protection of the public interest as regards international relations’. According to settled case-law, *"the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, [...] calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation"*². In this context, the Court of Justice has acknowledged that the institutions enjoy *"a wide discretion for the purpose of*

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.

² Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35

determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest”³.

The relevant parts of Document 2 contain sensitive information on several areas pertaining to the future international relations between the EU and the US, which were meant for internal use. There is a real and non-hypothetical risk that public disclosure of these parts would seriously harm the relations of the European Union with third countries, as its content could easily be misinterpreted and misused in a national or international context.

Consequently, the above-mentioned parts of Document 2 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 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.’

Parts of Document 2 relate to the ongoing decision-making process in relation to the Digital Services Act package.

Disclosure of these parts would seriously undermine the protection of the ongoing decision-making process, as it would reveal preliminary views and policy options. Therefore, the exception laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001 applies.

Consequently, the above-mentioned parts of Document 2 have been blanked out.

(iv) Protection of commercial interests

Parts of Document 2 are covered by the exception of Article 4(2) first indent of Regulation 1049/2001 which 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.

These parts of Document 2 contain sensitive business information relating to the business strategy of a legal person. There is a real and non-hypothetical risk that disclosure of these parts of the document could have an impact on the entity’s reputation and would therefore undermine and seriously affect its commercial interest.

Consequently, the above-mentioned parts of Document 2 have been blanked out.

³ Judgment in Council v Sophie in’t Veld, C-350/12 P, EU:C:2014:2039, paragraph 63

4. 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.

5. REUSE OF DOCUMENTS

Please note that parts of Document 1 originating from a third party 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 document without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from the reuse.

Please note that Document 2 was drawn up for internal use under the responsibility of the relevant services. It solely reflects the services' interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which was not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

You may reuse Documents 2 and 3, 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 document. Please note that the Commission does not assume liability stemming from the reuse.

6. 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

Enclosure: (3)