



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR JUSTICE AND CONSUMERS

The Director General

Brussels, 14 October 2022
JUST.DDG.B.1/MM

Ms Nienke Palstra

By email:

ask+request-11708-3a5da889@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2022/4568

Dear Ms Palstra,

We refer to your e-mail dated 11/08/2022 in which you make a request for access to documents, registered on 11/08/2022 under the above-mentioned reference number.

You request access to “all documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2022-07-07 between Didier Reynders and Microsoft Corporation.”

Your application concerns the following documents:

- 1) Briefing Part 1: JUST; For Commissioner Reynders; 05/08/2022.
- 2) Briefing Part 2: Unit JUST.C4; For Commissioner Reynders; 05/08/2022.
- 3) Email request: 03/06/2022, Ares(2022)3473528; Possible meeting between Commissioner Reynders and Microsoft.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that document 2) may be partially disclosed. Some parts of the document 2) have been blanked out as their disclosure is prevented by exception to the right of access laid down in the third indent of Article 4(1) of Regulation (EC) No 1049/2001.

Regarding documents 1) and 3), I regret to inform you that your application cannot be granted, as disclosure is prevented by exception to the right of access laid down in the first indent of Article 4(1) of this Regulation.

Regarding document 2: In line with Article 4(1), third indent (international relations), we consider that making the redacted parts public of Briefing Part 2 would seriously prejudice the mutual trust between the European Union and the United States, both as regards the ongoing talks on a new transatlantic data transfer framework after the invalidation of the EU-U.S. Privacy Shield by the Court of Justice of the European Union and other transatlantic files. After the invalidation of the European Commission’s adequacy decision 2016/1250 regarding the EU-U.S. Privacy Shield, the European Commission and the U.S. Department of Commerce are in negotiations on a strengthened transatlantic data transfer framework to comply with the judgement of the Court of Justice. In light of these ongoing talks, it is important to protect the credibility of the European Commission as a negotiating partner. Establishing

and protecting an atmosphere of mutual trust is a delicate exercise and any breach of that trust can have a serious adverse effect on the ongoing talks as well as future cooperation.

In addition to this, a complete disclosure of the document is also prevented by the exception concerning the protection of privacy and 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.

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 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 (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.

Regarding documents 1 and 3: Disclosure of the documents requested would undermine the protection of public security as provided by the first indent of Article 4(1) of Regulation (EC) No. 1049/2001. The disclosure would in particular undermine ongoing discussions on the security of IT solutions, including related to war crimes, with regard to data protection and cyber security as well as forthcoming negotiations between the EU and international partners on such matters. The storage of evidence related to possible war crimes being committed in the context of the current invasion of Ukraine is an extremely sensitive policy issue and the Commission's services must be free to explore all possible options in preparation of decisions at EU level and in international negotiations free from external pressure.

We have considered whether partial access to documents 1) and 3) could be granted. However, the documents are entirely covered by the exceptions and remaining parts after expunging the confidential information might be meaningless or illegible.

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 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

This reply is sent to you via email only and we would appreciate if you could confirm receipt of the present e-mail by replying to JUST-B1@ec.europa.eu.

Yours faithfully,

(e-signed)

Ana GALLEGO
Director-General