



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director-General

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

Ms Rachel Tansey  
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**Subject: Request for access to documents – GESTDEM No. 2018/6883**

Dear Ms Tansey,

Thank you for your e-mail of 13 December 2018 which was registered on 19/12/2018 under reference number GestDem 2018/6883, requesting access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L145, 31 May 2001, page 43 and following).

### **1. SCOPE OF YOUR REQUEST**

Your e-mail requested access to documents as follows:

*“(i) a list of meetings between DG GROW officials and/or representatives (including the Commissioner and her Cabinet) and*

*- representatives of collaborative economy platform companies (such as, but not limited to, Amazon (including Amazon Mechanical Turk/ ‘MTurk’), Deliveroo, TaskRabbit, Upwork, HomeAway, ClickWorker, Wimdu, Interhome, etc);*

*- consultancies or law firms acting for any of these companies (such as, but not limited to, FIPRA International, FTI Consulting, Covington & Burling, Technology Policy Advocates, acumen public affairs, Gide Loyrette Nouel, Flint Europe, EUROS / AGENCY, Delany & Covely, etc);*

*- representatives of Consumer Choice Center, Sharing Economy Ireland, Asociación Española de la Economía Digital (adigital), and/or any other collaborative economy platform interest groups; and,*

*- representatives of cross-sectoral industry federations (such as, but not limited to, BusinessEurope and AmCham EU),*

*at which the Collaborative Economy Communication, or follow-up to it, was discussed (since January 2015)*

*(ii) minutes and other reports of these meetings*

*(iii) all correspondence (including emails) between DG GROW officials and/or representatives (including the Commissioner and Cabinet) and representatives of the entities listed in part (i), concerning the Collaborative Economy Communication, or follow-up to it, since January 2015.”*

By letter of 24 January 2019, you further clarified that your request “concerning the Collaborative Economy Communication, or follow-up to it” is meant to cover “meetings and documents in which the 2016 Communication was subject of discussion”. You also agreed to narrow the scope of your request to the period 1<sup>st</sup> January 2016 to 31<sup>st</sup> December 2017.

According to your request, you were only interested in meetings and correspondence with representatives of **collaborative economy platform companies**, consultancies or law firms acting for any of these companies, **collaborative economy platform interest groups** and representatives of **cross-sectoral industry federations**.

We would like to point out that the European Commission, during the same period of time, has met and had correspondence with further stakeholders, including trade unions and consumer protection associations.

## **2. DESCRIPTION OF DOCUMENTS IDENTIFIED**

We have identified eleven documents that match the scope of your request related to the collaborative economy. The list of these documents is in annex. Please note that documents which concern on-going investigations about potential infringements of Union law are covered by the exceptions of Article 4(2) third indent and Article 4(3) of Regulation (EC) No 1049/2001 and are therefore not included in this list of documents.

Eight documents relate to meetings held between the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs and the mentioned associations and companies. Please note that the content of the reports of meetings with the third parties were drafted by the Commission; therefore they represent the Commission’s interpretation of what was discussed in the meetings and were not verified by the third parties.

Three documents include correspondence between the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs and the associations and companies at stake.

## **3. ASSESSMENT ON DISCLOSURE**

All the documents to which you have requested access contain personal data.

Four documents are disclosed with protection of personal data only. One of those relates to a meeting held and three to correspondence with those associations and companies.

Pursuant to Article 4(1)(b) of Regulation (EC) No 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.

The applicable legislation in this field 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').

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.<sup>1</sup>

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.<sup>2</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>3</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.<sup>4</sup>

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 request, 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

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<sup>1</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:C:2017:994.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy.

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.

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to submit a confirmatory application requesting the Commission to review this position.

Seven documents can be partially disclosed since disclosure is also prevented by exception to the right of access laid down in Article 4(2) of this Regulation.

The redacted parts of the documents contain commercially sensitive business information of the companies that met the Commission representatives. Disclosure of these parts would undermine the protection of commercial interests of a natural or legal person, including intellectual property.

The exception laid down in Article 4(2) of the Regulation applies unless there is an overriding public interest in disclosure of the documents.

From your request, we cannot see a public interest in making the content of the document public, which would outweigh the harm disclosure would cause to the interest protected by the invoked exception.

#### **4. 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:

European Commission  
Secretary-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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

e-signed  
Timo PESONEN

Annexes: Document register  
List of meetings with the requested associations and companies  
Zipped files