



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director General

Brussels, 26th August 2019
CONNECT/R4

Mr. Alexander Fanta

Netz.politik.org
Rue de la Loi 155
1000 Brussels
Belgium

By email only:

ask+request-7140-8c8732bf@asktheeu.org

Subject: Your application for access to documents – GestDem 2019/4113

Dear Mr. Fanta,

We refer to your access to documents application submitted under Article 2(1) of Regulation 1049/2001 on public access to documents (hereinafter, ‘Regulation 1049/2001’) received on 16/07/2019 and registered on the same date under the above mentioned reference number. We also refer to our holding reply dated 06/08/2019, our reference [Ares\(2019\)5106442](#), 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 means of your application you requested access to the following documents:

“...[i]nvitations to Commission officials and all other documents relating to an event called “Internet of Things: fast forward to the future” organized by Vodafone on April 29 in Brussels”

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified 21 documents as falling within the scope of your application:

1. Email: ‘Keynote speaking invitation’ from Nove dated 13 March 2019;
2. Email: ‘Keynote speaking invitation’ from Nove dated 13 March 2019;
3. Vodafone Presentation: ‘A new European policy approach to IoT’ of March 2019;
4. Email: ‘Follow-up to a meeting’, from Nove on 5 April 2019;
5. Attachment 1 to document 4: ‘Vodafone IoT Barometer 2018 final report’;

6. Attachment 2 to document 4: 'Vodafone Business 2019 IoT Barometer Main Report';
7. Attachment 3 to document 4: 'Analysys Mason Report for Vodafone on 5G and Net neutrality v4';
8. Attachment 4 to document 4: 'Hogan-Lovells - A comparison of IoT regulatory uncertainty in the EU, China and the United States';
9. Email: 'Invitation to Vodafone's IoT Conference' from Nove dated 11 April 2019;
10. Attachment 1 to document 9: 'Vodafone IoT Conference – Agenda 29th April';
11. Attachment 2 to document 9: 'Future EU IoT policy framework April 2019';
12. Email: 'Invitation – Internet of Things: fast forward to the future – More speakers confirmed' from Vodafone dated 10 April 2019;
13. Email: 'Follow-up to our meeting' from Nove dated 15 April 2019;
14. Attachment to document 13: 'Vodafone IoT Barometer follow-up – the European story – Final (9th April)';
15. Email: 'Vodafone IoT event – April 29' from Nove dated 15 April 2019¹;
16. Attachment 2 to document 15: 'Realising the potential of IoT data – report for Vodafone-min';
17. Email: 'Vodafone – EU Future IoT Framework event – Useful Information for POD' from Nove dated 25 April 2019;
18. Attachment to document 17: 'Vodafone IoT Conference: Useful information';
19. Internal briefing prepared for Vodafone IoT event of 29 April 2019;
20. Back to office report prepared following the Vodafone IoT event of 29 April 2019;
21. Email: 'Internet of Things: Fast Forward to the Future' from Vodafone dated 1 May 2019.

3. ASSESSMENT UNDER REGULATION 1049/2001

Having examined the documents falling within the scope of your request under the provisions of Regulation 1049/2001, we have arrived at the conclusion that **full disclosure** can be given for **3 documents** and that partial disclosure can be given for **eighteen documents** on the basis of applicable exceptions under Article 4 of Regulation 1049/2001.

A) Full disclosure:

Documents 8, 14 and 16 are fully disclosed.

Please note that these documents originate from a third party. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

B) Partial disclosure:

- (i) *Protection of personal data*

¹ This email has three attachments. Attachment 1 is the same document enclosed for document 8 and Attachment 3 is the same document enclosed for document 14.

Some documents for which you have requested access contain personal data, in particular names, functions, contact details and signatures.

Pursuant to Article 4(1)(b) of Regulation 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 Community legislation regarding the protection of personal data. The applicable legislation in this field is 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/EC² (hereinafter, ‘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.³ Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff numbers of an institution are to be considered personal data⁴.

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.

² Official Journal L 205 of 21.11.2018, p. 39.

³ 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](#).

⁴ 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](#).

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 document, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, we 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. As to the signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned. In light of the foregoing, we are disclosing a version of the document requested in which this data has been redacted and marked as personal data.

In light of this exception we are disclosing a version of **documents 1-7, 9-13, 15 and 17-21** in which this data has been redacted and marked as personal data.

With regard to **document 19**, further redactions are made in view of another applicable exception which will be explained hereunder. Also, **documents 2, 4, 12 and 13** contain some parts which fall outside the scope of your application and therefore we are disclosing a version of these documents in which this data has been redacted and marked as out of scope.

Please note that **documents 1-7, 9-13, 15, 17, 18 and 21** originate from a third party. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

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(ii) *Protection of commercial interests*

Article 4(2), first indent of Regulation 1049/2001 stipulates that “[t]he 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.

Following an examination of **Document 19**, we have come to the conclusion that this contains commercially sensitive information of Vodafone which is protected by the aforementioned exception under Article 4(2), first indent of Regulation 1049/2001. In particular, this information relates to statistics belonging to Vodafone concerning ‘internet of things’ which are not publically available. We consider that there is a real and non-hypothetical risk that public access to this part of the document would undermine the commercial interests of the third party concerned.

We are therefore disclosing a version of **document 19** in which this data has been redacted and marked as commercially sensitive information.

The exceptions laid down under Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the 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 disclosure but we have not been able to identify such an interest.

4. POSSIBILITY OF 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 the above positions.

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
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)

Roberto Viola

Enclosures: 21