



EUROPEAN COMMISSION

LEGAL SERVICE  
The Director General

Brussels, 12 March 2020

Mr Michael Veale  
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**BY E-MAIL AND REGISTERED MAIL WITH ACKNOWLEDGMENT OF RECEIPT**

**Subject: Request for access to documents**

Ref.: Your request of 2<sup>nd</sup> January 2020 registered on 25 February 2020 under references GestDem 2020/1108

Dear Mr Veale,

I refer to your request for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>. Your request concerns the written submissions from all parties in 3 cases.

In accordance with the «*fair solution*»<sup>2</sup> agreed with you, on 25 February 2020 the Legal Service registered the second part of your request concerning the written pleadings in Case C-40/17<sup>3</sup>.

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<sup>1</sup> Official Journal L 145, 31.05.2001, page 43.

<sup>2</sup> Ares(2020)155398.

<sup>3</sup> Judgment of the Court of Justice of 29 July 2019, Case C-40/17, *Fashion ID*, ECLI:EU:C:2019:629.

## **1. IDENTIFICATION OF THE DOCUMENTS**

After examination of the files of the Legal Service, the written observations submitted by the following parties have been identified as matching the terms of your request:

1. European Commission;
2. Fashion ID GmbH & Co. KG;
3. Facebook Ireland Ltd.;
4. Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen;
5. Verbraucherzentrale NRW;
6. Germany;
7. Germany's corrigendum;
8. Poland;
9. Belgium;
10. Italy;
11. Austria.

## **2. WRITTEN OBSERVATIONS SUBMITTED BY THE EUROPEAN COMMISSION (DOCUMENT UNDER NUMBER 1)**

After a concrete assessment of the Commission's written observations, I am pleased to inform you that full access can be granted. Accordingly, please find enclosed a copy of the requested written observations in French<sup>4</sup>. Kindly note that an English version is unavailable.

You may reuse the disclosed document free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of it. Please note that the Commission does not assume liability stemming from the reuse.

## **3. WRITTEN PLEADINGS SUBMITTED BY THE OTHER PARTIES (DOCUMENTS UNDER NUMBERS 2 TO 11)**

As far as the written observations of the other parties are concerned, in accordance with Article 4(4) of Regulation (EC) No 1049/2001, the Commission has consulted the authors of the respective documents on their disclosure.

Following these consultations, I would like to inform you that:

- the lawyers acting on behalf of Facebook Ireland Ltd., Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen and Verbraucherzentrale NRW, as well as the Governments of Germany, Poland, Belgium and Austria, have agreed to the disclosure of their written observations (documents under numbers 3 to 9 and 11);

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<sup>4</sup> German was the language of the proceedings.

- the lawyers acting on behalf of Fashion ID GmbH & Co. KG and the Government of Italy (documents under number 2 and 10) have not replied to the Commission's consultation.

With regards to the documents for which the Commission has not received a reply (documents under numbers 2 and 10), I would like to inform you that access can be granted in accordance with Regulation (EC) No 1049/2001.

In fact, the Court of Justice has recognised in its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P that, in cases where the proceedings have been closed by a decision of the Court, there are no longer grounds for presuming that disclosure of the pleadings would undermine those proceedings<sup>5</sup>.

Since C-40/17 is now closed, and in the absence of an objection from the lawyers acting on behalf of Fashion ID GmbH & Co. KG and the Government of Italy, I conclude that access can also be granted to the relevant documents in accordance with Regulation (EC) No 1049/2001.

Accordingly, you will find enclosed a copy of the French translation<sup>6</sup>, made by the services of the Court, of the documents under numbers 2 to 11. An English version of these documents is not available.

Please note that the name and initials of the Court of Justice's officials (on the first page of document 11) have been deleted, in accordance with Article 4 (l)(b) of Regulation (EC) No 1049/2001, as explained below.

The disclosed documents were transmitted by the Court of Justice to the Commission in its capacity as participant in the Court proceedings. Access to them is granted for information only and they cannot be re-used without the agreement of the originators, who hold the copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

#### **4. REFUSAL OF PERSONAL DATA**

As stated above, the name and initials of the Court's officials have been blanked out in the document originating from the Government of Austria (document 11). This information is covered by the exception provided for in Article 4 (l)(b) of Regulation (EC) No 1049/2001, in accordance with the European Union 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/EC<sup>7</sup> ('Regulation (EU) 2018/1725').

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<sup>5</sup> Judgment of the Court of Justice of 21 September 2010, Joined Cases *Sweden and Others v API and Commission*, C-514/07P, C-528/07P and C-532/07P, ECLI:EU:C:2010:541, paragraphs 130 and 131.

<sup>6</sup> German was the language of the proceedings. Original versions of documents 2 to 7 were in German. Original versions of documents 8, 9 and 10 were in Polish, Dutch and Italian, respectively.

<sup>7</sup> Official Journal L 205 of 21.11.2018, page 39.

Article 3(1) of Regulation (EU) 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>8</sup>

In its judgment in Case C-28/08P (*Bavarian Lager*)<sup>9</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>10</sup>. As regards the personal data of the officials of the institutions, the General Court has confirmed, in its judgment in Case T-39/17 that the information such as names, signatures, functions, telephone numbers and other information pertaining to staff members of an institution fall within the notion of “*private life*”, regardless of whether this data is registered in the context of a professional activity or not. Therefore, the name and initials of the Court’s officials have been deleted, since this information constitutes personal data in the meaning of Article 3(1) of Regulation 2018/1725<sup>11</sup>.

Pursuant to Article 9(1)(b) of Regulation (EU) 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 met and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation (EU) 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.

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<sup>8</sup> Judgment of the Court of Justice of 20 December 2017, Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

<sup>9</sup> Judgment of the Court of Justice of 29 June 2010, Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

<sup>10</sup> *Bavarian Lager* judgment, paragraph 63. 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 (EU) 2018/1725.

<sup>11</sup> Judgment of General Court of 19 September 2018 *Chambre de commerce and d’industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, Case T-39/17, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

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 documents, 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, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to 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.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

## **5. MEANS OF REDRESS**

Should you wish the position regarding the refusal of personal data to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below:

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

Yours sincerely,



Luis ROMERO REQUENA

Attachments: 11