



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 2021/1360

Dear Mr Fanta,

We refer to your 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') that you introduced on 9 March 2021 via email and which was registered on the same day under the above-mentioned reference number. We also refer to our holding reply, dated 30 March 2021, our reference Ares(2021)2193270, 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 request access to the following:

'Dear Communications Networks, Content and Technology,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

- All documents related to a meeting between cabinet members and Axel Springer SE on January 22, 2021 as found in the Transparency Register. The request includes e-mails, meeting minutes and any other document related to the meeting. (...)'

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Briefing for Commissioner Breton for a meeting with Axel Springer SE on 22 January 2021 (**Document 1**)
- Readout - Meeting between Commissioner Thierry Breton and Axel Springer SE, 22 January 2021 (**Document 2**)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001, we regret to inform you that access must be refused for both documents. Disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of privacy and integrity of individuals

Parts of Documents 1 and 2 are covered 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 and contact information of Commission staff members not pertaining to the senior management;
- Names and functions 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 commercial interests

Parts of Documents 1 and 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

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.

secrecy, in particular information about undertakings, their business relations or their cost components.

Parts of the Documents 1 and 2 contain sensitive business information relating to business strategies, the competitive situation on the market and other commercial interests of companies, including intellectual property. There is a real and non-hypothetical risk that disclosure of these parts of the documents could undermine and seriously affect the commercial interests of these companies.

(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 Documents 1 and 2 contain information drawn up for internal use regarding preliminary views and policy options for which no decision has been taken yet, including analysis of the Member States' legislation drafted to transpose the Directive on copyright in the Digital Single Market (DSM Copyright Directive) and the ongoing preparation of a Commission Communication (COM guidance on Art. 17 of the DSM Copyright Directive). Moreover, parts of these documents contain preliminary views and reflections of the Commission regarding the Digital Markets Act which is subject to ongoing discussions and deliberations in the inter-institutional negotiations. The risk of disclosing sensitive information regarding the Commission's preliminary views on draft legislation related to the transposition of Union Law and in relation to a legislative proposal for which the inter-institutional negotiations are still at an early stage would deter them from freely expressing their opinions and having frank, internal discussions. Speculations and misinterpretations of the public on the views and reflections would affect the exploration of different policy options and unduly restrict the Commission's internal space to think, exposing them to external pressure. The risk of disclosure of these parts would thus seriously undermine the ongoing decision-making processes. This risk is also reasonably foreseeable and not purely hypothetical.

We have considered whether partial access could be granted to Documents 1 and 2. However, partial access is not possible considering that these documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

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 documents which are being withheld but we have not been able to identify such an interest.

5. 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,

Electronically signed

Roberto Viola