



EUROPEAN COMMISSION
INTERNAL MARKET, INDUSTRY, ENTERPRENEUSHIP AND SMEs DIRECTORATE-GENERAL

Director-General

Brussels, **08 FEB. 2019**
Grow C3/LDC/ig ares 6894903

Mr Alexander Fanta
c/o netzpolitik.org
Schönhauser Allee 6-7
10119 Berlin
Germany

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

Advance copy by email:
[ask+request-6108-
36305e5a@asktheeu.org](mailto:ask+request-6108-36305e5a@asktheeu.org)

Dear Mr Fanta,

**Subject: Your application for access to documents – Ref GestDem No
2018/6207**

We refer to your e-mail dated 08/11/2018 in which you make a request for access to documents, registered on 23/11/2018 under the above mentioned reference number.

You request access to:

[...] documents which contain the following information:

- All correspondence and minutes pertaining to the meeting with Apple on May 15 2018 on the issue of the common charger. (As per EC website, the meeting was attended by Kaius Kristian Hedberg, Rolf Carsten Bermig.)

- The impact assessment study and all documents and correspondence pertaining to the study on common chargers. The study was mentioned by Commissioner Vestager in a written answer to the European Parliament on August 1: http://www.europarl.europa.eu/doceo/document/E-8-2018-002595-ASW_EN.html

The Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) has identified all documents falling within the scope of the request. The documents identified are listed in the document register enclosed with this letter. We are glad to inform you that we grant full or partial access to the documents identified.

Please note that a number of documents (clearly identified in the document register) contained information on areas not relating to the request and therefore that content has been redacted.

Specifically concerning the ongoing impact assessment study, access to commercially sensitive elements and personal data have been omitted according to article 4 of Regulation 1049/2001 on public access to documents. The outcomes of the study are expected by end of 2019, with the publication of the final report.

Please also note that documents originating from third parties, as defined in Article 3(b) of Regulation (EC) 1049/2001, 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.

With respect to the other documents, i.e. internal notes, minutes of meetings and letters sent by the Commission, please note that these documents do not reflect the final position of the Commission. They cannot be quoted as reflecting the Commission's final position and cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

We interpret the scope of the request as not covering the documents produced before the signature of the contract for the study.

Parts of documents n. 12, 14, 17, 18, as listed in the document register, contain commercially sensitive information which has been redacted. Disclosure of these parts of the documents requested would undermine the protection of the commercial interests of the companies, as putting this information in the public domain would affect its competitive position on the market. Therefore the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to parts of these documents.

Additionally, documents n. 1, 4, 5, 6, 7, 8, 13, 14, 15, 17, 18 as listed in the document register, contain personal data: names, e-mails, phone numbers and addresses. 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/EC¹ ('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 data².

¹ Official Journal L 205 of 21.11.2018, p. 39.

² 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](https://eur-lex.europa.eu/eli/jud_2017/994).

In its judgment in Case C-28/08 P (*Bavarian Lager*)³, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁴.

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 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 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

³ 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.

⁴ 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.

1049/2001, 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
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076

B-1049 Bruxelles or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Lowri Evans

Enclosure: Table with the list of documents
 Zip file

