



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

The Director General

Brussels,
JUST/01/AC

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Registered letter with acknowledgement of receipt

Advanced copy to e-mail: ask+request-6555-034ef0ec@asktheeu.org

Subject: Your applications for access to documents – GESTDEM n. 2019/1478

Dear Ms Izuzuquiza,

We refer to your e-mails sent to the European Commission on 7 March 2019 and 24 March 2019 in which you make 45 requests for access to documents, registered under the above-mentioned reference numbers.

Your requests covers a period between 26 April 2018 and 7 March 2019 and concerns:

- *a list of all lobby meetings held by this DG with Facebook or its intermediaries. The list should include: date, individuals attending and organisational affiliation, as well as the issues discussed;*
- *all minutes and other reports of these meetings;*
- *all correspondence, including attachments (i.e. any emails, correspondence or telephone call notes) between this DG (including the Commissioner and the Cabinet) and Facebook or any intermediaries representing its interests; and*
- *all documents prepared for the purpose of the meeting and/or exchanged during the course of the meeting.*

In the letter of 26 March 2019 addressed to you by the Secretariat General of the Commission, it was indicated that a search in the document management systems of the European Commission for 'intermediaries' of the companies you are interested in is not precise enough to yield results. You therefore agreed on 1 April 2019 to limit your request in this respect.

I would like to point out that DG JUST has received a number of very similar requests for access to documents submitted by you but also by other applicants concerning lobby meetings held within the European Commission with Amazon, Google, Microsoft or Facebook or persons representing their interests. Although the applicants are different entities, the requests are almost identical and were made at the same time. Their handling represent a considerable investment in terms of resources by the same departments of DG JUST within the same period.

As stated by the EU Courts, the European Commission needs to respect the principle of proportionality and ensure that the interest of the applicant for access is balanced against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration.

The work needed to deal with your applications has entailed multiple searches for documents, which have been undertaken simultaneously by my services and by Ms Jourova Cabinet.

- Search for documents relating to meetings with Google, Facebook, Microsoft and Amazon both at the level of the Directorate-General or the service concerned and at the level of the Commissioner and his Cabinet in several document management systems of the Commission;
- Retrieval of the documents falling under the scope of your requests;
- Scanning of the documents which are not in pdf format;
- Preliminary assessment of the content of the documents in light of the exceptions of Article 4 of Regulation EC (No) 1049/2001;
- Assessment of the further procedural steps to undertake, for example whether third party consultations should be made;
- (possibly) third-party consultations under Article 4(4) of Regulation 1049/2001 and (possibly) a further dialogue with the third party originators of documents falling within the scope of your request;
- Final assessment of the documents in light of the comments received, including of the possibility of granting (partial) access;
- Redactions of the relevant parts falling under exceptions of Regulation EC (No) 1049/2001);
- Preparation of the draft reply for each of your requests by each of the services concerned;
- (possible) Consultation of the Legal Service ;
- Finalisation of the replies at administrative level and formal approvals of the draft decisions;

- Final check of the documents to be (partially) released (if applicable) (scanning of the redacted versions, administrative treatment,...) and dispatch of the replies.

The handling of the simultaneous requests cannot be expected to be completed within the normal time limits set out in Article 7 of Regulation 1049/2001 for all the documents you are looking for.

The Secretariat general of the Commission considering that your request had a wide scope has already proposed a fair solution according to Article 6(3) of Regulation (EC) No 1049/2001. In accordance with the case law of the EU Courts, a fair solution can only concern the content or the number of documents applied for, not the deadline for replying.¹

The Secretariat General of the Commission proposed to narrow down the scope of your request, so as to reduce it to a more manageable number, i.e.:

- Restrict the temporary scope of your wide-scoped request to a period of your choice not exceeding six months and limit its scope only to the meetings published in the Transparency Register;
- Limit the number of your seemingly separate requests to 10 requests of your choice;
- Limit the scope of your requests to 20 meetings of your choice published in the Transparency Register for each one of the companies you are interested in (Google, Amazon, Microsoft and Facebook).

You have rejected the options proposed by the Secretariat General.

After your reply, DG JUST has reassessed its capacity to handle the simultaneous requested in the time prescribed by the Regulation and determined that given the activities which must be carried out to satisfy the request it could only handle documents related to the meetings which took place between Commissioner Jourova and or members of her Cabinet with the four companies indicated in the simultaneous request, including yours, in the last year preceding the request.

As for the list of these meetings, information on participants and topics discussed, I refer to the letter of the Secretariat General of 26 April 2019, which included a full list of meetings held by the Commissioner and its Cabinet members.

In this context, this is the list of documents processed by DG JUST in order to determine whether they could be disclosed or not. You can see from the list that a number of documents are partially released, for the reasons explained more in detail in the next sections of the letter.

¹ Judgment of the Court of Justice of 2 October 2014, *Guido Strack v Commission*, C-127/13 (hereafter '*Guido Strack v Commission*'), EU:C:2014:2250, paragraphs 26-28.

Meeting	topic	documents	Disclosure
Meeting of the Commissioner of 4/3/2019	1. Report of the meeting	Ares(2019)2550079	Article 4(1)(b), data protection
	2. Briefing		Article 4(1)(b), data protection
Meeting of 28/1/2019 on data protection Meeting of 28/1/2019 on the code of conduct	3. Request of meeting	Ares(2019)107072	
	4. briefing		Article 4(1)(b), data protection
	5. report of the meeting	Ares(2019)1450305	Article 4(1)(b), data protection
	6. report of the meeting		Article 4(1)(b), data protection
Meeting of 9/11/2018	Public event in Lisbon	No specific document was prepared for a bilateral meeting or received from Facebook	
N/A	7. <i>e-mail</i> 8. <i>Follow-up letter from Facebook of 18/10/2018</i>	<i>Ares 2018)5414515</i>	Article 4(1)(b), data protection Article (4)2 first indent – commercial interests Article 4(2), 2 nd and 3 rd indent - proceedings and legal advice, [and/or] the purpose of inspections, investigations and audits
<i>Meeting of Wojtek</i>	9. Report of the	<i>Ares (2019)835879</i>	Article 4(1)(b), data

<i>Talko with Facebook on October 10</i>	meeting		protection Article 4(2), 2 nd and 3 rd indent - proceedings and legal advice, [and/or] the purpose of inspections, investigations and audits
Meeting of the Commissioner with Facebook of 27/9/2018	10. Report of the meeting	<i>Ares (2019)835389</i>	Article 4(1)(b), data protection
<i>Meetings of Commissioner Jourova with Facebook on 18 September (consumer protection)</i>	11. Letter to Facebook of 6/7/2019	<i>Ares(2018)3606493</i>	Article 4(1)(b), data protection Article 4(1)a, 4 th indent - public interest as regards the financial, monetary or economic policy of a Member State Article 4(2), 2 nd and 3 rd indent - proceedings and legal advice, [and/or] the purpose of inspections, investigations and audits
	12. E-mail 13. Reply from Facebook of 22/7/2018	<i>Ares(2018)3902273</i>	Article 4(1)(b), data protection Article (4)2 first indent – commercial interests
	14. Invitation of 22/8/2018 to the meeting with CAB	<i>Ares(2018)4345976</i>	Article 4(1)(b), data protection
	15. Letter to Facebook of 28/8/2018	<i>Ares(2018)4427339</i>	Article 4(1)(b), data protection

	<i>16. Letter from Facebook to DG JUST of 14/9/2018</i>	<i>Ares(2018)4755044</i>	Article 4(1)(b), data protection Article (4)2 first indent – commercial interests
	<i>17. Briefing for the meeting</i>	<i>Ares(2018)5057268</i>	Article 4(1)(b), data protection Article 4(2), 2 nd and 3 rd indent - proceedings and legal advice, [and/or] the purpose of inspections, investigations and audits
	<i>18. Report of the CPC meeting</i>		Article 4(1)(b), data protection
Meeting of 17/9/2018	<i>19. Briefing to MS Nikolay and Daniel Braun</i>		Article 4(1)(b), data protection
N/A	<i>20. Exchange e-mail 30.4.2018 – 8.5.2018</i>	<i>Ares (2018)3119694</i>	Article 4(1)(b), data protection
Meeting of the Commissioner of 26/4/2018	<i>21. Report of the meeting</i>	<i>Ares (2018)3445141</i>	Article 4(1)(b), data protection
N/A	<i>22. Letter from Ms Sandberg of 5.4.2018</i>	<i>Ares(2018) 1854626</i>	Article 4(1)(b), data protection
N/A	<i>23. Letter to Ms Sandberg</i>	<i>Ares(2018)1669470</i>	Article 4(1)(b), data protection

Since some of the documents concerned originate from third parties, the originators of the documents have been consulted and the final assessment on the disclosure of the documents requested has to take into account their position.

I would also like to draw your attention on the fact that all briefings have been prepared for internal use and aimed at providing a factual, political and legal picture of the files that the Commissioner and her Cabinet members had to discuss with stakeholders. Their content includes therefore staff opinions and assumptions on the position of those stakeholders and of the Member States or third countries on a given topic.

1. REDACTION BASED ON ARTICLE 4(2) FIRST INDENT – COMMERCIAL INTERESTS

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third parties, I regret to inform you that your application cannot be fully granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The author of the documents n. 8, 13 and 16 has in particular objected to disclosure of certain parts of the documents that they sent to the Commission and has motivated its position on the fact that these documents contain commercially sensitive business information of the company that submitted it. Access to those parties would therefore undermine interests protected under Article (4)2 first indent of Regulation (EC) 1049/2001.²

2. REDACTION BASED ON ARTICLE 4(1)A, 4TH INDENT, FINANCIAL, MONETARY OR ECONOMIC POLICY OF A MEMBER STATE

Parts of the document n. 11 (letter to Facebook of 6 July 2018 and relevant annexes) have been redacted at the request of third parties concerned on the basis that disclosure would undermine the protection of the public interest as regards the financial, monetary or economic policy of a Member State, in line with Article 4(1)a, 4th indent of Regulation (EC) No. 1049/2001. Furthermore, according to the third party concerned, disclosure of the E-Mail addresses dedicated to the “Notice and action procedure”, which the competent authorities use to notify platform operators about unlawful content on their online interfaces and ask the latter to remove it, would enable abusive conduct and could hamper the efficient functioning of the “Notice and action procedure”.

In accordance with Article 7(2) of Regulation (EC) 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position, according to the procedure indicated at the end of this letter.

3. REDACTION BASED ON ARTICLE 4(2), 2ND AND 3RD INDENT, LEGAL ADVICE, INSPECTIONS, INVESTIGATIONS

With regard to the Commission's own documents n. 8, 11 and 17 we consider that their full disclosure would also undermine the protection of Article (4)2, 2nd and 3rd indent (i.e. legal advice/investigations). Some parts of them concern in fact “*proceedings and legal advice, [and/or] the purpose of inspections, investigations and audits [...]*”.

The investigations on Facebook general terms are part of a coordinated action based on Article 9(2) of Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC-Regulation) aimed at investigating the facts and determining the actions undertaken by Facebook in this context, which is, as it is also stated in the document Briefing Commissioner, not yet concluded. Furthermore, it

² 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.’

should be noted, that the documents mentioned above contain legal advice by the consumer protection cooperation networks, which the competent authorities may use in the context of their investigations and/or enforcement actions, including in front of the competent courts.

The exceptions laid down in Article 4(2) of Regulation (EC) 1049/2001 apply unless there is an overriding public interest in disclosure of the documents “[t]he institution shall refuse access to a document where disclosure would undermine the protection of [...] court proceedings and legal advice, the purpose of investigations and audits, unless there is an overriding public interest in disclosure.”.

In this respect, it should be noted that according to Article 1 of Regulation (EC) No 2006/2004, “[t]his Regulation lays down the conditions under which the competent authorities in the Member States designated as responsible for the enforcement of the laws that protect consumers’ interests shall cooperate with each other and with the Commission in order to ensure compliance with those laws and the smooth functioning of the internal market and in order to enhance the protection of consumers’ economic interests.”. Especially in cases where (possible) infringements of consumer law affect a number of consumers in more than one Member State, the coherent enforcement of EU consumer law clearly constitutes a public interest. In such cases, disclosure of the certain information that is shared among the competent authorities and the Commission, as well as, where appropriate, with third parties concerned by the investigation – including in particular certain information in respect to the legal assessment – before the action is closed, could undermine the efficiency of such actions.

When assessing the exceptions of Article 4(2), 2nd and 3rd indent of Regulation (EC) No 1049/2001 in the light of a possible overriding public interest to disclosure, it should in particular be noted, that the CPC network, after concluding the first part of its investigations, has already published its assessment (see press release of 17 March 2017, including the common position: http://europa.eu/rapid/press-release_IP-17-631_en.htm).

The Commission has carefully assessed the exceptions to disclosure, under Article 4(2) of Regulation (EC) No 1049/2001 and has concluded that in the present case the public interest to full disclosure of documents does not override the public interest in the efficient law enforcement, which a disclosure at this stage of the coordinated action under Article 9 of the CPC-Regulation would undermine.

4. REDACTION BASED ON ART. 4(1)(A) - INTERNATIONAL RELATIONS

Concerning document n. 25, some paragraphs have been redacted on the basis of the exception to disclosure set in Article 4(1)(a) third indent of Regulation 1049/2001, as we consider that its disclosure undermines the international relations with a third country.

Making available the redacted parts to the public would seriously prejudice the relations between the European Commission and the United States government in their ongoing dialogue on the protection of privacy in the context of transatlantic data transfers, and the mutual confidence between them. Establishing and protecting an atmosphere of mutual trust with the United States is a very delicate exercise and any harm to that trust cannot easily be repaired and thus can have a serious adverse effect on any ongoing dialogue as well as future cooperation.

The Commission also has a legitimate interest in not revealing its tactical considerations and other strategic elements of the past discussions as this could negatively affect its position in any future (trade) negotiations at both bilateral or multilateral (WTO/GATS) level. A section of document n. 12 has been redacted as it concerns topics not connected with your request and therefore it must be considered as out of the scope of your request (annex at the end of the document).

5. REDACTION BASED ON ART. 4(2) - ONGOING COURT CASES

Concerning documents n. 4, 7 and 12, some sections have been redacted on the basis of the exception to disclosure set in Article 4(2) second indent of Regulation (EC) 1049/2001, as they refer to and comment on ongoing Court cases. Their disclosure would undermine the proper conduct of such judicial procedures.

Redacted sections contain in fact references to court proceedings. Their disclosure would undermine the protection of on-going and reasonably foreseeable future court proceedings in that it would negatively affect the Commission ability to defend its position in Court an equal footing with the respective applicant, contrary to the principle of equity of arms.

6. REDACTION BASED ON ART. 4(3) - DECISION MAKING PROCESS

Finally, full disclosure of documents n. 2, 3, 8, 9 and 11 would undermine the decision making process of the Commission, as it would reveal the preparatory work for the negotiation strategy for the adoption of the "new deal for consumers" package, currently under discussion in European Parliament and Council.

Article (4)3 indicates that

" 3. Access 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.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure."

The Commission's services must be able to continue their intelligence and mediation work with stakeholders and national authorities, which is essential to gather information and feedback on a number of provisions which are debated, in order to facilitate the elaboration of a final text which would meet the objectives of the proposed legislation, as well as the formulation of the official position of the Commission in the context of the co-decision procedure. Anticipating the options under consideration, would compromise solutions and the possible fallback position on key issues, as decided by the College of Commissioners. It would ultimately deprive the Commission of essential negotiating tools, which enable it to fulfil its institutional role at this stage of the legislative procedure.

Therefore, the exception laid down in Article 4(3) second subparagraph of Regulation (EC) No 1049/2001 applies to this document.

7. REDACTIONS BASED ON ARTICLE 4(1)(B), DATA PROTECTION

Pursuant to Article 4(1)(b) of Regulation (EU) 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 (EU) 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/EC3 ('Regulation 2018/1725').

The documents to which you request access contain personal data, in particular names, e-mails, telephone numbers, signatures.

Indeed, 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.⁴ 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. In its judgment in Case C-28/08 P (Bavarian Lager)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶.

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 fulfilled 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

³ Official Journal L 205 of 21.11.2018, p. 39.

⁴ 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](#).

⁵ 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.

⁶ 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.

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 (EC) 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.

8. REVIEW OF THE DECISION

In accordance with Article 7(2) of Regulation (EC) 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the position granting partial access to the requested documents, including 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.

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

Unit C.1. 'Transparency, Document Management and Access to Documents'

BERL 7/076

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Yours faithfully,

Tiina ASTOLA
Director-General