



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Acting Director General

Brussels,  
JUST/C2/(2020)3412702s

***By registered mail with acknowledgment  
of receipt to***

Mr Robert Gorwa  
Alexander von Humboldt Institut für  
Internet und Gesellschaft  
Französische Straße 9  
10117 Berlin

***Advance copy by email:*** [ask+request-  
7872-1cd6100c@asktheeu.org](mailto:ask+request-7872-1cd6100c@asktheeu.org)

**Subject: Your application for access to documents - GestDem 2020/3306;**

Dear Mr Gorwa

We refer to your e-mail dated 20/04/2020 in which you make a request for access to documents, registered on 4/6/2020 under the above-mentioned reference number.

You request access to:

1. the comments issued by Italy and Sweden
2. the draft law assessment on 2017/127/D put together by JUST and CNECT, and shared internally between JUST and CNECT via email on 23 May 2017 [potential reference number: Ares(2017)5237754]
3. any other analysis, commentary or opinions on the notification 2017/127/D from the Legal Service, DG CNECT, DG GROW, DG JUST, or other DGs, including draft reports, memos, or other documents

Please note that due to the wide scope of your request, some parts have been attributed to other Commission Directorates General and Services:

- DG GROW will handle part of your request under Gestdem reference 2020/2274
- DG CNECT will handle part of your request under Gestdem reference 2020/3305;
- The Legal Service will handle part of your request under Gestdem reference 2020/3307;

This reply relates only to the following documents held by Directorate-General for Justice and Consumers, notably;

- 1) E-mail from a Commission official in DG JUSTICE to an official in DG CONNECT of 24 April 2017 at 11:45, entitled 'Notification 2017/127/D act improving law enforcement on social networks'.
- 2) E-mail from a Commission official in DG JUSTICE to several officials in DG CONNECT and DG JUSTICE of 23 May 2017 at 11:50, entitled 'Draft law assessment JUST/CNECT' (registered under Ref. Ares(2017)5137369 – 20/10/2017;
- 3) E-mail from a Commission official in DG JUSTICE to an official in DG JUSTICE, copying several officials in DG CONNECT of 8 June 2017 at 14:56, entitled 'NetzDG-assessment-meeting CNECT-JUST-DE\_clean(3)(2).docx';
- 4) E-mail from a Commission official in DG JUSTICE to an official in DG CONNECT of 9 June 2017 at 18:00, entitled 'Flash report technical meeting between DG JUST and DG CNECT and representatives from the German Federal Ministry of Justice and Consumer Protection ('the German Ministry of Justice') on the draft law to improve law enforcement in social networks, 9 June';

You will receive the reply from the other respective Directorate-General in due course.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted in respect of Document 1 as disclosure is prevented by exception/exceptions to the right of access laid down in Article 4 of this Regulation.

The document which you seek to obtain is an internal exchange between Commission officials of DG CNECT and DG JUST concerning the draft reply of these two Commission services to the preliminary consultations by DG GROW concerning notification 2017/127/D. As to the substance, it relates to the possible need to ask questions to the German authorities in respect of the notification.

Disclosure of the document requested would undermine the protection of legal advice since it contains purely internal legal opinions in matters of a sensitive nature, drafted under the responsibility of the different Commission Services concerned. Disclosure of the requested documents would undermine the protection of legal advice provided for under Article 4(2), second indent, of Regulation (EC) No 1049/200

We have also considered whether partial access could be granted to the documents requested and have come to the conclusion that document 2, 3 and 4 may be partially disclosed. Some parts of the documents have been blanked out, as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

Document 2 is an internal exchange between Commission officials of DG CNECT and DG JUST containing a preliminary legal analysis of the notified law by the two services as agreed at unit level.

Document 3 is an internal exchange between Commission officials of DG CNECT and DG JUST containing an update of the preliminary legal analysis in preparation of a technical meeting between DG JUST and DG CNECT and representatives from the German Ministry of Justice on the draft law to improve law enforcement in social networks on 9 June 2017.

Document 4 is an internal exchange between Commission officials of DG CNECT and DG JUST providing a brief summary of the technical meeting between DG JUST and DG CNECT and representatives from the German Ministry of Justice on the draft law to improve law enforcement in social networks on 9 June 2017.

Parts of the redacted parts of document 2, 3 and 4 contain purely internal legal opinions in matters of a sensitive nature, drafted under the responsibility of the different Commission Services concerned. Disclosure of the redacted parts of the requested documents would undermine the protection of legal advice provided for under Article 4(2), second indent, of Regulation (EC) No 1049/2001.

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document also 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) 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 ('Regulation 2018/1725').

The documents to which you request access also contain personal data, in particular names of Commission Official.

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.

In its judgment in Case C-28/08 P (Bavarian Lager), 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

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 [eg: 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 the personal data, in documents 3, 5 and 6 as the need to obtain access thereto for a purpose in the public interest has not been substantiated. Furthermore, 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.

Regarding your request to access under 8) "all other emails referring to the issue at stake", we inform you that the Directorate-General Justice and Consumers does not hold any documents that would correspond to the description given in your 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, 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, and / or in case you disagree with the application of the exemptions laid down in Article 4(2), second indent of Regulation (EC) No 1049/2001.

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  
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,

(e-signed)  
Salla SAASTAMOINEN

Enclosures:

*2) Redacted E-mail from a Commission official in DG JUSTICE to several officials in DG CONNECT and DG JUSTICE of 23 May 2017 at 11:50, entitled 'Draft law assessment JUST/CNECT' (registered under Ref. Ares(2017)5137369 – 20/10/2017;*

*3) Redacted E-mail from a Commission official in DG JUSTICE to an official in DG JUSTICE copying several officials in DG CONNECT of 8 June 2017 at 14:56, entitled 'NetzDG-assessment-meeting CNECT-JUST-DE\_clean(3)(2).docx';*

*4) Redacted E-mail from a Commission official in DG JUSTICE to an official in DG CONNECT of 9 June 2017 at 18:00, entitled 'Flash report technical meeting between DG JUST and DG CNECT and representatives from the German Federal Ministry of Justice and Consumer Protection ('the German Ministry of Justice') on the draft law to improve law enforcement in social networks, 9 June';*