



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director- General

Brussels,
CONNECT/R4

Mr Mathias Schindler
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Unter den Linden 50 11011 Berlin,
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Advance copy via email:
ask+request-8112-b7ce3804@asktheeu.org

REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents- GestDem 2020/3485

Dear Mr Schindler,

We refer to your email dated 8 June 2020, wherein you make a 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’), registered on 9 June 2020 under the abovementioned reference number. We also refer to our holding reply, dated 30 June 2020, our reference Ares(2020)3427483, 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

Your application reads as follows:

‘‘Dear Communicatons Networks, Content and Technology,

Palantir Technologies, Inc. is a private company supplying products and services. I am asking for any information related to Palantir and its products and services, including:

a) meeting records (drafts, memos, invitations, appointments, cancellations) involving Palantir officials and people representing Palantir and their interests

b) correspondence (including within the [Authority name] and with the European institutions concerning Palantir technologies and / or its products and services or the regulatory environment of the EU that affects their products and services. This may include policy papers, consultation input, memoranda or any other form of information.

c) invoices, tenders, service agreements, purchases, orders, procurement documents, offers etc. concerning products and services using Palantir Technologies.

Please do not transfer this request to another Authority, this is a request specifically for you. Do not exclude short-lived documents or documents considered to be unimportant under archiving rules.

Please ensure that information that is considered to be exempt for access for this request is not automatically deleted within to make sure that subsequent confirmatory applications and legal appeals as well as Ombudsman office inquiries can still access and assess them. ''

Concerning the scope of your request, reference is made to your email of 10 June 2020 addressed to Directorate-General Research and Innovation (DG RTD) to which you submitted a similar request wherein you clarify that the timeframe of this request is since 2004 (when the company was founded). With regard to the people representing Palantir and their interests, you referred to the names listed in the EU transparency register at

<https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=553786035745-66> . You also noted that since a complete list of representatives is not available, the request should not cover only the people listed in this entry.

Given the wide-scope of your request and the involvement of the entire DG CONNECT, the Commissioner and his Cabinet as well as various former Commissioners and their Cabinets, we contacted you on 22 June 2020 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001 (our reference, Ares(2020)3246171). In order to help you narrow down the scope of the request, we provided you with the categories of the approximately 35 documents with references to the company Palantir that had been identified at that stage. We indicated the steps that the handling of your application would entail and we concluded that according to our estimates a maximum of 20 documents could possibly be dealt with within 30 working days counting from the date of registration of your application.

By your email dated 22 June 2020 (our reference, Ares 3621297), you proposed as a fair solution, that we send you the list of the documents identified so that you can indicate which of these documents should be assessed. By our email of 29 June 2020 (our reference, Ares(2020)3402558), we sent you the list of documents and we asked you to specify the documents you are interested in and up to a maximum of 20 documents. We indicated that according to our estimate this is the maximum of what can be dealt with within the remaining timeframe.

By your email dated 29 June 2020 (our reference Ares(2020)3539663), you indicated the documents that you were interested in. We note that the number of documents you selected exceeds the 20 documents that could be dealt with within the remaining time. Your selection corresponds to more than 30 documents.

In line with the principles of sound financial management and good administration to which the Commission is bound to, pursuant to Article 310(5) of the Treaty on the functioning of the European Union, we are obliged to balance your interest in access against the workload resulting from the processing of your application. This is in line with the case law of the EU Courts¹.

We have therefore, as announced in our emails of 22 and 29 June 2020 and taking into account the list of documents indicated by you, restricted the scope of your application to the first 20 documents listed in your email of 29 June 2020. This is what we could achieve, taking into account the Commission's resources and the global workload of the concerned staff during the same period, within the given timeframe.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

The following documents fall within the scope of the request after having been restricted as set out above:

- Email of 27 February 2020 from the National Security Commission on Artificial Intelligence (NSCAI) regarding NSCAI's event in Brussels on 2 June 2020 (**Document 1**) and its attachment, the NSCAI interim report (**Document 2**),
- Email of 25 March 2020 from the AI Transparency Institute (**Document 3**) and its attachment, the Special Issue on AI Governance (**Document 4**),
- The Future of Government 2030+, A Citizen Centric Perspective on New Government Models, Joint Research Centre, 2019 (**Document 5**),
- Data ethics - the new competitive advantage, Gry Hasselbach and Pernille Trenberg (**Document 6**),
- Study on data sharing between companies in Europe - Case studies (**Document 7**),
- Final Report - Emerging Technologies in Electronic Components and Systems (ECS) – Opportunities Ahead (**Document 8**) and its Annex (**Document 9**),
- Mission report from Vice-President Ansip's and his Cabinet's members' visit to Toulouse, 13 March 2019 (**Document 10**),
- Briefing note on the follow-up inter-service meeting on China on 14 January 2020 (**Document 11**),
- Note for the attention of the DG CONNECT Management Team - International WEEKLY Digital Press Review to April 9th 2020 (**Document 12**),
- Letter dated 8 April 2020, from the MEP Sophie in't Veld to Commissioner Breton and Commissioner Reynders (**Document 13**),
- DG CONNECT Note- International Activity Report: March – mid-April (**Document 14**),
- Email from the Delegation in the USA of 17 April 2020 (**Document 15**),

¹ Judgment of the Court of Justice of 2 October 2014 in case C-127/13, Strack v Commission, paragraphs 27-28.

- Article: Data democracy – increased supply of geospatial information and expanded participatory processes in the production of data, International Journal of Digital Earth (2015) (**Document 16**),
- LT- Innovate Report 2013 - Status and Potential of the European Language Technology Markets (**Document 17**),
- Email of 5 July 2013 from Digidentity to Commissioner Kroes and DG CONNECT's reply (**Document 18**),
- Letter from IDATE dated 5 January 2016 (**Document 19**) and the attached Digiworld yearbook 2015 (**Document 20**).

Please note that within the given timeframe we were able to assess also the following document:

- Report: For a meaningful Artificial Intelligence -Towards a French and European Strategy, Cédric Villani, Parliamentary Mission (Task Force) assigned by the Prime Minister Édouard Philippe (**Document 21**).

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the documents requested under the provisions of Regulation 1049/2001 and taking into account the opinion of the third parties, we have arrived at the conclusion that full access can be granted to seven documents. Partial access can be granted to five documents and disclosure is refused for nine documents, as disclosure of these parts is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Full disclosure

Documents 2, 5, 6, 7, 16, 17 and 21 are fully disclosed. Please note that these documents are publicly available via the following links:

Document 2:

<https://drive.google.com/file/d/153OrxnuGEjsUvIxWsfYauslwNeCEkvUb/view>

Document 5:

https://publications.jrc.ec.europa.eu/repository/bitstream/JRC115008/futurgov_web_lq_v2.pdf

Document 6 :

<https://dataethics.eu/wp-content/uploads/DataEthics-UK-original.pdf>

Document 7:

<https://op.europa.eu/en/publication-detail/-/publication/004fcf02-49c7-11e8-be1d-01aa75ed71a1/language-en/format-PDF/source-search>

Document 16:

<https://www.tandfonline.com/doi/full/10.1080/17538947.2015.1008214>

Document 17:

http://www.lt-innovate.org/sites/default/files/2216-LT2013_Report_MediumQuality.pdf

Document 21

https://ec.europa.eu/knowledge4policy/publication/meaningful-artificial-intelligence-towards-french-european-strategy_en

B. Partial disclosure

(i) Out of scope

Parts of Document 13 fall outside the scope of the request and have been blanked out. The remaining parts are fully disclosed.

(ii) Protection of privacy and integrity of individuals

Full disclosure of Documents 1, 12, 14 and 18 is prevented 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:

- Names, initials, functions and contact information of Commission staff members not pertaining to the senior management
- Names, functions and contact details of other natural persons.

Article 9(1)(b) of the Data Protection Regulation² 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.

²Regulation (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.

Please note that some parts of these documents have been also blanked out as being outside the scope of your request. With regard to, in particular Documents 12 and 14, please note that entire pages have been deleted as they fall outside the scope of the request.

(iii) Protection of commercial interests

Article 4(2) first indent of Regulation 1049/2001 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 secrecy, in particular information about undertakings, their business relations or their cost components.

Part of Document 18 contains information relating to the concerned third parties' activities, views and positions. Disclosure of this part of the document would seriously undermine the third parties' commercial interests and, thus, have to be blanked out.

C. Non disclosure

We regret to inform you that access to Documents 3-4, 8-11, 15, 18-20, cannot be granted as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

Disclosure of documents 3-4, 10, 19-20 is prevented by the exception in Article 4(2) first indent of Regulation 1049/2001 related to the protection of commercial interests of a natural or legal person, including intellectual property.

Parts of Documents 3-4 and 19-20 contain confidential information about the respective third parties' positions, views, activities and strategies, which was not provided for public use. Disclosure of these parts of the documents would undermine the third parties' relations and their positions and could affect their interests, including their commercial interests and intellectual properties rights.

Moreover parts of these documents contain personal data, in particular the names, functions and contact details of Commission staff members not pertaining to the senior management and of other natural persons, thus their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section B(ii). Other parts of these documents fall outside the scope of this request.

Document 10 is a report from Vice-President Ansip's and his Cabinet members' mission to Toulouse in March 2019. Parts of this document fall outside the scope of this request. The parts falling within the scope of the request concern a meeting with Airbus and contain commercially sensitive information regarding the third parties' activities, views and strategies. This information could affect the companies' position and competitive advantage in the market and could thus undermine their commercial interests, if publicly released.

Documents 8 and 9 are covered by the exception of Article 4(3) first subparagraph of Regulation 1049/2001 which 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.” These documents are a study and its Annex prepared for DG CONNECT by a third party. The study is finalised and is currently in the process of approval by the European Commission. Disclosure of these documents at this stage would undermine the decision-making process with regard to the approval of these documents. Please note that once the approval process is completed, the study will be published and will be openly accessible.

Documents 11 and 15 are covered by the exception to the right of access laid down in Article 4(1)(a), third indent of Regulation 1049/2001 which refers to ‘protection of the public interest as regards international relations’. According to settled case-law, *“the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, [...] calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation”*³. In this context, the Court of Justice has acknowledged that the institutions enjoy *“a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest”*⁴.

Document 11 is a briefing note prepared for an inter-service meeting relating to China and it contains positions and comments made in preparation of this meeting, which were meant for internal use. There is a concrete risk that the public disclosure of this document would seriously harm the relations between the European Union and China, as it could be misinterpreted and misused in a national or international context.

Document 15 is an email sent from the US Delegation to various recipients within the Commission. There is a concrete risk that the public disclosure of this email would affect the mutual trust between the EU and the USA and thus undermine their relations.

Document 18 is not disclosed because, after applying the redactions to the parts covered by the exceptions laid down in Article 4(1)(b) and 4(2) first indent of Regulation 1049/2001 (explained above), the remaining parts were meaningless.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Articles 4(2) and 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 documents which are being withheld but we have not been able to identify such an interest.

³ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36

⁴ Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63

5. REUSE OF DOCUMENTS

You may reuse Documents 5, 7, 12 and 14 free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Documents 1, 2, 6, 13, 16, 17 and 21 originate from third parties. Please note that they are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

6. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 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,

(e-signed)

Roberto Viola

Enclosures: (11)

