



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR TRADE

Directorate R - Resources, Interinstitutional Relations, Communications and Civil Society  
**Transparency, Civil Society and Communication**

Brussels  
TRADE.R.3/MM

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

Ms Margarida Da Silva  
Corporate Europe Observatory  
Rue d'Edimbourg 26  
1050 Brussels

***Advance copy by email:***  
ask+request-9394-  
1ab2a3dd@asktheeu.org

**Subject: Your application for access to documents – Ref GestDem 2021/2796**

Dear Madam,

I refer to your application dated 28/04/2021, in which you make a request for access to documents under Regulation (EC) No 1049/2001<sup>1</sup> ('Regulation 1049/2001'), registered on 29/04/2021 under the above mentioned reference number.

**1. SCOPE OF YOUR REQUEST**

In your request, you asked for access to documents as follows:

*all documents related to the following meetings with Executive Vice-President Dombrovskis and/or his cabinet:*

- *Zaneta Vegnere 23/12/2020 Facebook Ireland Limited (FB-I) - Free flow of data - Digital Services Act - Digital Markets Act - Transatlantic cooperation in the field of technologies*
- *Elina Melngaile 03/02/21 - Nokia Trade policy in the digital sector*
- *Elina Melngaile 20/04/2021 - Trans-Atlantic Business Council (TABC) K&L Gates GP - Brussels Oracle (ORCL) Volkswagen Aktiengesellschaft (VOLKSWAGEN AG)*

---

<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

*Electrolux Home Products Europe (Electrolux) - EU-US relations - Cooperation on trade and technology - Trade disputes*

- *12/03/21 - DIGITALEUROPE (DE) Recovery and Resilience Facility - focus on digital transition and national reform plans; Trade Policy Review and digital trade, also - international data flows and Digital tax; EU-US relations for trade on technologies.*
- *26/04/2021 - IBM Corporation (IBM) The EU's trade agenda, particularly in relation to the technology and ICT sector, incl. the transatlantic relationship - transatlantic data flows, Trade and Technology Council initiative, also - digital part of the Recovery and Resilience Facility*
- *05/02/21 - Facebook Ireland Limited (FB-I) EU Digital finance strategy, stable coins, crypto currencies and digital wallets; EU-US trade and tech cooperation; transatlantic data transfers and free data flows.*
- *25/02/2021 - ITI - The Information Technology Industry Council (ITI) EU-US trade relations; Trade Policy Review; Digital trade, including EU's position on e-commerce and Digital taxation.*

In your application you also specify the type of documents you seek access to:

- *all agendas for each of these meetings;*
- *any record of the aforementioned meetings. This may include, but not necessarily be limited to, minutes of the meetings, verbatim reports of the meetings, transcripts etc, that would provide a record of the proceedings of the meetings;*
- *all documents prepared or received for the purpose of these meetings and/or distributed among the attendees before or during the course of these meetings (such as – but not limited to – handouts, leaflets, briefings or background notes).*
- *all correspondence sent or received in preparation for these meetings and/or in order to arrange these meetings, including all attachments*
- *all documents prepared or received with regards to and/or as a follow up to these meetings;*
- *all correspondence sent or received with regards to and/or as a follow up to these meetings, including all attachments.*

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

In accordance with settled case law<sup>2</sup>, when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001. Such assessment is carried out in a multi-step approach:

- first, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception;
- second, it must examine whether disclosure of the parts of the document in question pose a "*reasonably foreseeable and not purely hypothetical*" risk of undermining the protection of the interest covered by the exception;

---

<sup>2</sup> Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

- third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Article 4(2) and Article 4(3) of Regulation 1049/2001, the institution is required "*to ascertain whether there is any overriding public interest justifying disclosure*"<sup>3</sup>.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents<sup>4</sup>, '*the exceptions to that right [...] must be interpreted and applied strictly*'<sup>5</sup>.

In reply to your request, I can inform you that we have identified **14 documents** that fall within the scope of your request. The identified documents are listed for ease of reference in Annex I. For each of the documents the Annex provides a description and indicates whether parts are withheld on which ground pursuant to Regulation 1049/2001.

Having examined the requested documents under the applicable legal framework, I am pleased to grant you full access to all identified documents where only names and other personal data have been redacted pursuant to article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 2018/1725. Hence, the main content of these documents relevant to your request is accessible.

Copies of the accessible documents are enclosed to this letter.

The reasons justifying the application of the exception concerning personal data are set out below.

## **2.1 Protection of the privacy and integrity of the individual**

Under Article 4(1)(b) of Regulation 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/EC<sup>6</sup> ('Regulation 2018/1725').

Article 3(1) of Regulation 2018/1725 states that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of Justice has indicated 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.<sup>7</sup> Names, signatures, functions,

---

<sup>3</sup> *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52-64.

<sup>4</sup> See Regulation 1049/2001, recital (4).

<sup>5</sup> Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

<sup>6</sup> OJ L 205, 21.11.2018, p. 39.

<sup>7</sup> See judgment of 20 December 2017, *Nowak*, C-434/16, EU:T:2018:560, paragraphs 33 to 35.

telephone numbers and/or initials pertaining to staff members of an institution are thus to be considered personal data.<sup>8</sup>

The requested documents contain names, e-mail addresses and telephone numbers that relate to identified or identifiable natural person, as well as other personal data.

It follows from the judgment in *Commission v Bavarian Lager*<sup>9</sup> that when a request is made for access to documents containing personal data, the EU data protection legislation, including Regulation 2018/1725, becomes fully applicable.

Under Article 9 of Regulation 2018/1725, personal data can be transmitted to recipients established in the Union other than Union institutions and bodies only if, among other things, such recipients have established that such transmission is necessary for the purposes mentioned in Article 9(1)(a) or (b) of that regulation.

Your request does not put forward any arguments to establish such necessity.

There is thus no need for the Commission to examine, in accordance with Article 9(1)(b) of Regulation 2018/1725, whether there is a reason to assume that legitimate interests of the data subjects concerned by the documents might be prejudiced. That said, there are in any event reasons to assume that the legitimate interests of those data subjects would be prejudiced by disclosure of the personal data concerned, as there is a real and non-hypothetical risk that such public disclosure would harm the privacy of those data subjects and expose them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation No 1049/2001, access to the personal data contained in the requested documents must in principle be refused.

However, in line with the Commission's commitment to ensure transparency and accountability, the names of the Members of Cabinet and the names of the senior management of the Commission are disclosed in the released versions.

### **3. MEANS OF REDRESS**

In accordance with Article 7(2) of Regulation 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 Secretary-General of the Commission either by email to [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu), or at the following address:

Secretary-General  
European Commission  
Transparency, Document Management & Access to Documents  
BERL 7/76  
Rue de la Loi 200/Wetstraat 200  
1049 Brussels

---

<sup>8</sup> Judgment of 19 September 2018, *Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, T-39/17, EU:T:2018:560, paragraphs 43 and 44.

<sup>9</sup> Judgment of 29 June 2010, *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 59.

Yours faithfully,

e-signed  
Michelangelo MARGHERITA  
Head of Unit

Enclosure:      List of documents  
                     Disclosed documents