



EUROPEAN COMMISSION
Secretariat-General

The Secretary-General

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By registered mail:

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**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/20011**

**Subject: Your confirmatory application for access to documents –
GESTDEM 2015/3658**

Dear Ms Fiedler,

I am writing in reference to your email, registered on 14 August 2015, by which you lodge a confirmatory application in accordance with Article 7(2) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

Through your initial application, registered as a follow-up to your confirmatory application GESTDEM 2015/2271³, you asked the Commission to provide you with documents concerning the *Forum with the Internet Service Providers Community* (hereafter 'the Forum') and more specifically:

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.05.2001 p. 43

³ In this case your confirmatory application went beyond your initial request. Therefore, the Commission registered the relevant part as a new request.

- (1) Documents or communication between the private sector and the Commission following the announcement to set up such a Forum;
- (2) Documents and communications between the Commission and community groups/citizens, mentioned in section 2.6 of the Commission's Communication 'Preventing Radicalisation to Terrorism and Violent Extremism' (COM(2013)941 final of 15 January 2014' PREVENT Communication of 2015), or a confirmation that no such documents exist;
- (3) Documents regarding plans for setting up the Forum.

By letter of 31 July 2015, the Directorate-General for Migration and Home Affairs (DG HOME):

- granted access to the documents identified under point (1) above and to one document falling under point (3);
- informed you that there are no documents falling under point (2), as the Commission does not communicate directly with community groups or citizens in this regard;
- refused access to the following two documents, identified as falling under point 3:
 - (i) internal Note of 10 June 2015 addressed to the Commissioner Avramopoulos concerning the EU level forum with Information Technology (IT) companies; and
 - (ii) concept Note in view of the preparation of the high level event for the launch of the EU Internet Forum.

In your confirmatory application you refer to the statement made in the meeting report of 7 May 2015 that the Forum was *building upon preparatory meetings organised in 2014*. You ask the Commission to verify the existence of documents related to these preparatory meetings.

Please note however that your initial request was about *future* preparations of the Forum, following the announcement made about the Forum in the European Agenda on Security. The preparatory meetings held in the past, to which the minutes of 7 May 2015 refer and which in retrospect provide useful insights on the set-up of the IT Forum, can therefore not be considered to be part of your initial request. As the scope of a confirmatory decision cannot go beyond that of the initial request of which it forms a review, documents relating to these preparatory meetings (to the extent that they exist) consequently fall outside the scope of your confirmatory request.

In any event, I note that you have submitted a new initial request concerning the minutes and the list of participants of the preparatory meetings organised in 2014. In the context of this request, registered under reference GESTDEM 2015/4066, DG HOME provided you with partial access to the list of participants and to the minutes (internal report) of the informal ministerial dinner. The latter brought together EU Member States' Ministers of

Home Affairs and senior representatives of Google, Facebook, Twitter and Microsoft and was organised by the Commissioner Cecilia Malmström. As DG HOME explained to you, this was the only meeting held in 2014 that could be considered as a preparatory meeting relating to the EU Internet Forum.

In view of the above, I understand that your confirmatory request covers the following documents:

1. Internal Note of 10 June 2015 addressed to the Commissioner Avramopoulos concerning the EU level Forum with IT companies (**document 1**);
2. Concept Note in view of the preparation of the high level event for the launch of the EU Internet Forum (**document 2**).

In your application, you finally claim that, in the reply of DG HOME to your initial request GESTDEM 2015/3658, the latter did not provide a list of the documents identified in relation to the Internet Forum.

Please note however that those documents that existed at the time of your initial request were identified and listed in the above-mentioned reply by DG HOME of 31 July 2015 as documents 1 a) and b), 3 a) i) and ii) and 3 b).

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I am pleased to inform you that partial access is granted to both documents 1 and 2.

The non-disclosure of the parts of the above-mentioned documents is justified on the basis of the exception of Article 4(3), first subparagraph, concerning the protection of the Commission's decision-making process and Article 4(1)(a) of Regulation 1049/2001 concerning the protection of the public interest as regards public security.

2.1. Protection of the decision-making process and protection of the public interest as regards public security

Article 4 (3) of Regulation 1049/2001 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.

Article 4 (1)(a) of Regulation 1049/2001 provides that *[t]he institutions shall refuse access to a document where disclosure would undermine the protection of public security.*

Release of the redacted parts of documents 1 and 2 would seriously undermine the decision-making process protected by Article 4(3), first subparagraph of Regulation 1049/2001, as explained below.

Document 1 is an internal note prepared by DG HOME for Commissioner Avramopoulos, which concerns the launch of the EU-level Forum with IT companies to counter terrorism online. The note explains the overall context of the initiative, the proposed remit of the Forum, the organisational aspects as well as a series of actions and initiatives and identifies the challenges, which are to be taken into consideration in the context of this initiative.

Document 2 is an internal document, preparing for the high-level launch event of the Forum and suggests practical arrangements and preparations for the event and the topics proposed for discussion at the event. It is a "living" document in the sense that it is meant to be regularly up-dated in light of new developments and ongoing discussions.

Therefore, while document 1 is linked to a specific event (*jour fixe* meeting with Commissioner Avramopoulos) and bears a date, document 2 is work in progress and continues to be updated. The Commission is currently working actively on the preparation of the Forum, which is envisaged to take place towards the end of the year⁴. Therefore, the internal Commission's decision-making process regarding the planned Forum and its different aspects is currently fully ongoing. The Commission is still reflecting on both the substantive aspects relating to the Forum, such as its remit and focus, and the organisational aspects, such as the involvement of various stakeholders.

The redacted parts in document 1 and 2 reflect internal policy opinions exchanged within the Commission and concern only those elements regarding the Forum that are still under consideration. It is possible that the proposals put forward by the responsible unit in DG HOME will still be amended. In this context, premature disclosure of these internal views and policy options would seriously undermine the Commission's margin of manoeuvre in exploring, in the framework of the ongoing decision-making process, all possible policy options free from external pressure. Full disclosure of these documents would seriously undermine the serenity of the future discussions and hence, the decision-making process, concerning the Forum within the Commission. The latter should be able to explore all possible options free from external pressure.

You appear to suggest in your application that the content of the documents that are already being discussed with external stakeholders would not be worthy of protection. Please note however that the content of the documents has not been shared with external stakeholders or with future attendees, as they are internal documents. The documents

⁴ As explained in the reply provided by DG HOME to your application GESTDEM 2015/4066, the Forum is likely to be convened in December 2015.

reflect internal considerations as well as references to views and positions expressed by external stakeholders. In this latter respect, I would like to stress that discussions with the internet industry are essential as they are a critical stakeholder. These discussions are ongoing in order to inform internal reflections before a final decision is made. The engagement with different stakeholders and in particular industry in the context and preparation of the IT Forum is based on a relationship of mutual trust among all stakeholders involved. It would be inappropriate to release such information before decisions have been reached, and before we have had a chance to brief our stakeholders. Furthermore, revealing the position or proposals of certain stakeholders may also undermine the necessary climate of mutual trust.

More specifically, as regards the redactions for document 1, I would add the following:

- The details of initiatives at national level or at EU level as well as a further paragraph on page 2 under section 1 reveal a preliminary appraisal of initiatives and their potential impact or relevance for the discussions within the IT Forum. These are purely internal considerations guiding the future decisions on the precise remit of the Forum's activities. Furthermore, the full remit of the Forum has yet to be agreed and is still being discussed;
- The redacted parts under organisational aspects would reveal the appraisal by different stakeholders on the organisation and timing of planned events, as well as proposed initiatives that might be envisaged but which have not taken place or may not materialise;
- Section 4, on challenges, was redacted so as not to divulge a preliminary appraisal of issues on which the Commission will need to reflect further (some of these aspects are summarised on page 5 of that same concept note).

As regards the redactions for document 2, please note that:

- The redacted parts on page 1 would reveal internal plans and considerations as regards the timing and involvement of different stakeholders for the launch event in December 2015; these are purely internal considerations guiding the future decisions on the precise content of discussions and envisaged participation at the launch event, which is still under discussion;
- The redacted parts on page 2 preceding section III contain internal considerations about envisaged meetings with private stakeholders as well as evaluations of positions of private stakeholders of a purely internal nature;
- The redacted parts under section III on pages 2 – 4 contain details and internal considerations about potential topics of the envisaged high level launch event; these issues are still being discussed.

Finally, issues to be dealt with by the IT Forum are closely linked to matters of public security within the meaning of Article 4(1)(a) of Regulation 1049/2001. The public

dissemination of documents revealing concerns to be addressed and exploring possibilities to overcome challenges to tackle terrorist propaganda online is to be handled with extreme care. References to specific initiatives, topics to be discussed and concrete steps to be implemented would therefore undermine the protection of public security and the Commission's on-going efforts to prevent and counter radicalisation to terrorism and violent extremism.

In light of the above, the Commission concludes that access has to be refused to the (redacted parts) of the above-mentioned documents, as their disclosure would seriously undermine the decision-making process protected by Article 4(3), first subparagraph of Regulation 1049/2001 and the public interest as regards public security protected under Article 4(1)(a) of Regulation 1049/2001.

In your confirmatory application you ask for criteria that would define which types of stakeholders the Commission invites for the relevant meetings. The focus being at present on what the internet industry can do to address the pressing issue of terrorist propaganda on the internet, the Commission has so far invited hosting and social media companies where most of the harmful content is disseminated (these companies were mentioned in the documents which are in your possession). This does not exclude that, depending on the issues to be discussed, other stakeholders could be invited or consulted and their engagement could be sought.

3. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that Article 4(1)(a), first hyphen of Regulation 1049/2001 do not include the possibility for the exception defined therein to be set aside by an overriding public interest.

The exceptions laid down in Article 4(3) of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

I note that you do not put forward any elements to demonstrate the existence of an overriding public interest in disclosure of the redacted parts of the documents.

Nor have I, based on my own analysis, been able to identify any elements capable of demonstrating the existence of a public interest that would override the need to protect the Commission's decision-making process concerning the organisation of the IT Forum in question, at the point in time when the Commission has not yet finalised its thinking regarding this matter and when the IT Forum has not yet taken place.

Therefore, I consider that in the present case, the prevailing interest is to secure the effective completion and the organisation of the IT Forum and ultimately the Commission's efforts to address violent extremism and terrorism-related activities in the Internet and social media, as part of the overall fight against terrorist radicalisation and recruitment.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation 1049/2001, partial access is granted to both documents, covered by your request. However, for the reasons explained above, no further partial access is possible without undermining the Commission's on-going decision-making process.

5. MEANS OF REDRESS

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

A handwritten signature in black ink, consisting of a long horizontal line with a loop and a downward stroke at the end.

Alexander Italianer