



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES

The Director-General

Brussels, 02/08/2019
GROW.03/AS/

By registered letter with acknowledgment of receipt

Mr Alexander Fanta
Rue de la Loi, 155
Brussels

Advance copy by email:
a.fanta [REDACTED]@fragdenstaat.de

**Subject: Your application for access to documents – Ref GestDem No
2019/4221**

Dear Mr Fanta,

We refer to your e-mail dated 19/07/2019 in which you make a request for access to documents, registered on 19/07/2019 under the above-mentioned reference number.

You request access to all documents related to:

“-List of lobby meetings your Directorate-General held with Amazon or its intermediaries from November 2014 up to the present. The list should include: date, individuals attending and organisational affiliation, the issues discussed, - Minutes and other reports of these meetings

- All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between your DG (including the Commissioner and the Cabinet) and Amazon or any intermediaries representing its interests in that time.

- All documents prepared for the meetings and exchanged in the course of the meetings between both parties in the given time frame.”

These documents should cover the period between November 2014 and July 2019.

After examination of your request according to the Regulation 1049/2001 on public access to documents, we have listed 13 documents to be partially disclosed.

- Email of 17 December 2014 addressed to Commissioner Bieńkowska, which includes as annex a letter of meeting request, reference Ares(2014)4250786 (hereafter ‘document 1’);
- Email of 25 May 2016 addressed to the Cabinet of Commissioner Bieńkowska, reference Ares(2016)2503476 (hereafter ‘document 2’);
- Exchange of emails of 25 May, 13 June and 8 August 2016 addressed to Commissioner Bieńkowska, which includes as annex a letter of meeting request, reference Ares(2016)4204690 (hereafter ‘document 3’);
- Exchange of emails of 22 August and 8 September 2016 addressed to Commissioner Bieńkowska, reference Ares(2016)4204690 (hereafter ‘document 4’);
- Email of 10 April 2017 addressed to the Cabinet of Commissioner Bieńkowska, reference Ares(2017)2119964 (hereafter ‘document 5’);
- Email of 24 May 2017 addressed to the Cabinet of Commissioner Bieńkowska, reference Ares(2017)2640756 (hereafter ‘document 6’);
- Email of 6 December 2017 addressed to the Cabinet of Commissioner Bieńkowska, which includes as annex a letter of meeting request and a reply to Amazon of 12 December 2017, reference Ares(2017)5990282 (hereafter ‘document 7’);
- Email of 4 June 2018 addressed to the Cabinet of Commissioner Bieńkowska and a reply to Amazon of 20 June 2018, reference Ares(2018)2904802 (hereafter ‘document 8’);
- Email of 18 June 2018 addressed to the Cabinet of Commissioner Bieńkowska, which includes as annex a letter of meeting request, reference Ares(2018)3213950 (hereafter ‘document 9’);
- Email of 31 October 2018 addressed to the Cabinet of Commissioner Bieńkowska, reference Ares(2018)5575824 (hereafter ‘document 10’);
- Email of 5 November 2018 addressed to Commissioner Bieńkowska, reference Ares(2018)5655155 (hereafter ‘document 11’);
- briefing for Commissioner Bieńkowska for the meeting of 13 October 2016, reference Ares(2019)3452300 (hereafter ‘document 12’);
- briefing for the deputy Head of Cabinet of Commissioner Bieńkowska for the meeting of 23 November 2017, reference Ares(2019)3452238 (hereafter ‘document 13’);

Having examined the document/documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that it/they may be partially disclosed. Some parts of the document/documents have been blanked out as their disclosure is prevented by exception/exceptions to the right of access laid down in Article 4 of this Regulation.

Protection of privacy and the integrity of the individual

Pursuant to Article 4(1)(b) of Regulation (EC) 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) 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/EC¹ ('Regulation 2018/1725').

The documents to which you request access contain personal data, in particular names, signatures, functions and contacts of internal and external individuals.

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 data².

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 data³.

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵.

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

¹ Official Journal L 205 of 21.11.2018, p. 39.

² 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](#).

³ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

⁴ 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.

⁵ 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

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 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, 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.

As to the handwritten signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

Protection of the decision-making process

Article 4(3), first subparagraph of Regulation (EC) No 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'.

Document 12 is an internal briefing prepared by non-senior Commission staff for the attention of Commissioner Bienkowska in view of one of the meetings mentioned in your request.

The withheld parts of the document concern a limited number of sensitive views expressed by the Commission services related to matters on which the Commission has not taken a decision yet, such as new initiatives or revisions of existing legislative acts

and their future aims. These issues are sensitive because they relate to the regulatory environment for the provision of digital services in Europe and its possible update.

Disclosure of the redacted parts of the documents at the preliminary stage of the elaboration of those new initiatives would seriously undermine the protection of the decision-making process of the European Commission regarding ongoing reflexions on some of the pieces of legislation mentioned in the document. It would reveal internal considerations of a strategic nature that would reduce the margin of manoeuvre of the Commission.

Indeed, the Commission has an obligation to protect the soundness of its decision-making processes from undue influence, so as to ensure that, '[i]n carrying out its responsibilities, the Commission shall be completely independent', according to Article 17(3) of the Treaty on the Functioning of the European Union. In this sense, it is important for the quality of the Commission's decision-making process that documents drawn up for internal use are protected, so as to ensure an adequate analysis and discussion within the Commission services. The withheld part of the document concern possible defensive points for important sensitive questions such as the liability regime concerning illegal content and how this could be regulated in the future, possible new rules of intellectual property enforcement in e-Commerce, an approach to designing new measures that identify and disrupt the money trail for commercial scale intellectual property infringing activities.

There is a concrete risk that disclosing, at this stage, opinions on possible revision of the current legal framework, before the Commission has had the opportunity to take position, would seriously undermine the Commission's decision-making process as it would expose it to external pressure. The fact that the withheld parts of the document concern problems and possible solutions reinforces the conclusion that organised interests would exercise external pressure.

In light of the above, the relevant undisclosed parts of document 12 should be protected in accordance with Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

I have not been able to identify any public interest capable of overriding the public and private interests protected by in Article 4 (3) of Regulation (EC) No 1049/2001.

Please note that 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

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.

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

B-1049 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

e-signed

