



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR EDUCATION, YOUTH, SPORT AND CULTURE

Brussels,

Mr Alexander Fanta  
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By registered letter with acknowledgment of receipt

Advance copy by email:  
[a.fanta.9eav6uyfgz@fragdenstaat.de](mailto:a.fanta.9eav6uyfgz@fragdenstaat.de)

Dear Sir,

**Subject: Your application for access to documents – Ref GestDem 2019/4712**

We refer to your e-mail dated 19/07/2019 in which you make a request for access to documents, registered on 13/08/2019 under the above-mentioned reference number. By your e-mail dated 04/09/2019 you have clarified that your request covers documents relating to lobby meetings with Amazon or its intermediaries held from November 2014 up to present, where “intermediaries” means “employees of the companies and direct intermediaries such as public affairs people retained directly by Amazon to speak on its behalf” excluding trade groups in which Amazon is represented.

Your request concerns the following meetings.

- all documents related to the 29-01-2015 meeting between Commissioner Tibor Navracsics and Amazon Europe Core SARL, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations
- all documents related to the 01-02-2018 meeting between Commissioner Tibor Navracsics and Amazon Europe Core SARL, including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, e-mails, and presentations.

Your request refers to the documents listed as annexes to this letter.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that the document ARES(2018)901536 - defensive note, may be partially disclosed. Some parts of the document have been blanked out as their disclosure would undermine the autonomy of the decision making of the Commission and thus is prevented by the exception laid down in Article 4(3), 1<sup>st</sup> sub-paragraph of Regulation (EC) No 1049/2001 for the following reasons.

The redacted parts of the defensive note at issue develop through mock questions and answers an argumentaire on some aspects of the regime on the use of protected content by online content-sharing service providers as established by the Directive on Copyright in the Digital Single Market adopted on 15 April 2019. This has been one of the most sensitive and controversial issues in the

legislative deliberations of the Directive. While the adoption of the Commission's legislative proposal is now concluded, the Commission is to play an important role to ensure a smooth and consistent implementation of the new legislation and notably the provisions on the item in question. In particular it has to support and assist as appropriate the Member States in the transposition of the new rules into national law. For the regime on the use of protected content by online content-sharing service providers, the Directive specifically mandates the Commission to organise, in cooperation with the Member States, stakeholder dialogues to discuss best practices and issue guidance on the application of the new rules. The defensive note at issue includes mock questions which reflect the briefing authors' understanding and perception of some arguments developed by some stakeholders on the above-mentioned item. On the other hand, the mock answers are intended as rebuttals of such arguments and provide some indications which reflect the views and understanding of the briefing authors in relation to the issues debated at a given moment of the legislative negotiations. The Commission was the target of external pressure from conflicting interests of various stakeholders both in the process which led to the legislative proposal and the discussions in the legislative process which were marked by a significant degree of difficulty and complexity. In this context, we expect the Commission to be still the target of strong external pressure in its further interventions concerning the implementation of the Directive. This is due to the political and economic implications of the measures adopted and the fact that there are still debates among stakeholders and between Member States and the existence of different views and concerns on various elements. We therefore consider that disclosing the defensive note may undermine the autonomy of the Commission's decision-making process in relation to its further intervention in the implementation of the measure at issue

The exceptions laid down in 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the document. We have examined whether there could be an overriding public interest in disclosure, but we have not been able to identify such an interest.

Furthermore, information consisting personal data has been redacted in all the documents.

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 in particular names and contact details of staff who do not form part of the senior management of the Commission; names, functions and other information related to persons from outside the Commission.

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.

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 data.

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<sup>1</sup> Official Journal L 205 of 21.11.2018, p. 39.

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>2</sup>, 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<sup>3</sup>.

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, for instance, 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.

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, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit a confirmatory application requesting the Commission to review this position. The same is

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<sup>2</sup> 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.

<sup>3</sup> 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.

applicable if you request the Commission to review this position as regards the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001.

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](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

EAC ACCESS TO DOCUMENTS TEAM