



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels,

***By Registered Letter with
Acknowledgment of Receipt***

Mr Alexander Fanta
netzpolitik.org
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1000 Brussels
Belgium

Advance copy by email :
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Subject: Your application for access to documents – ref. GestDem n°2019/3924

Dear Mr Fanta,

We refer to your application for access to documents dated 09/07/2019 and registered on the same date under the above-mentioned reference number.

We also refer to your reply¹ to our request for clarification dated 17/07/2019², in which you clarified the wording of your request by limiting the temporal scope of your request to documents drawn up as from 1 November 2014.

You have requested a list of lobby meetings between DG HOME and Facebook or its intermediaries during the period 1 November 2014 to 9 July 2019, the respective minutes and preparatory documents of these meetings, and all the correspondence exchange between DG HOME and Facebook.

We refer to the definition of a “lobby meeting” for defining the scope of your request, by reference to the definition given in Article 2 of the Commission decision on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals ([2014/838/EU, Euratom](#)) and the Commission decision on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals ([2014/839/EU, Euratom](#)):

¹ Ares(2019)4666153.

² Ares(2019)4638403.

As a result, we have identified the following meetings:

- 19/09/2017: meeting with Severine Wernert/ Julie Ruff (Members of Cabinet King) and Facebook Ireland Limited – subject: Encryption/e-evidence
- 09/10/2017: meeting with Giorgios Rossides (member of cabinet Avramopoulos) and Facebook Ireland Limited, subject: encryption
- 23/01/2018: meeting with Commissioner Dimitris Avramopoulos/ Sofia Asteriadi/ Giorgios Rossides (members of cabinet) and Facebook Ireland Limited, subject: Cooperation against terrorist content online
- 06/02/2018: meeting with James Morrison (Head of Cabinet King) and Facebook Ireland Limited – subject: Tackling terrorist content online
- 11/04/2018: meeting with James Morrison (Head of Cabinet King) and Facebook Ireland Limited – subject: fake news
- 10/12/2018: meeting with Thomas Myrup Kristensen, Head of Facebook’s Brussels office, and Nathaniel Gleicher, Head of Cybersecurity Policy, Head of Cabinet King, James Morrison and Member of Cabinet David Knight.
- 06/02/2019: meeting with Thomas Myrup Kristensen, Facebook and Marie Frenay (Cabinet Ansip), Ulrik Smed (Cabinet King) and Felix Kartte (EEAS).
- 16/02/2019: meeting with Nathaniel Gleicher, Head of Cybersecurity Policy, Facebook, and Commissioner Julian King in the margins of the Munich Security Conference

For the above-mentioned meetings, the following documents were identified:

- Minutes of the meeting on 6 February 2019 with Thomas Myrup Kristensen, Facebook and Marie Frenay (Cabinet Ansip), Ulrik Smed (Cabinet King) and Felix Kartte (EEAS). Ref. Ares(2019) 2819183
- Report of 08/02/2018 of the meeting of 23/01/2018 with Facebook–ref. Ares(2018) 4480578.

We enclose a copy of the documents requested. Document 1 was drawn up for internal use under the responsibility of the relevant Cabinet of Vice-President ANSIP. Documents 1 and 2 solely reflect the services’ interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which was not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

In addition, we have identified the following documents as relevant for your request:

- Flash report: Meeting with Facebook on e-evidence, 10/08/2016 (Ares(2018)3166967)
- Flash report: Meeting with Facebook on e-evidence, 27/02/2017 (Ares(2017)1130553)
- Letter from Facebook on 6 February 2019 (Ares(2019)707414)
- Reply from the cabinet to Facebook on 18 February 2019 (Ares(2019)995297)

Some documents to which you have requested access contain personal data, in particular names of Commission staff members which are not in a management position, names of Facebook representatives and biometric data (signatures).

Pursuant to Article 4(1)(b) of Regulation (EC) n°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) n°45/2001 and Decision n°1247/2002/EC³ ('Regulation 2018/1725').

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.⁴ 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.⁵

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁶, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁷.

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

³ Official Journal L 205 of 21.11.2018, p. 39.

⁴ 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](#).

⁵ 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](#).

⁶ 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.

⁷ Whereas this judgment specifically related to Regulation (EC) n°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.

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 in question 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) n°1049/2001, access cannot be granted to the personal data in question, 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 individual concerned would not be prejudiced by disclosure of the personal data.

For the remaining meetings covered by your request, we regret to inform you that the Commission does not hold any documents related to those meetings, since no briefings, minutes or any other documents were drafted.

As specified in Article 2(3) of Regulation (EC) n°1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request.

In accordance with Article 7(2) of Regulation (EC) n°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,

Paraskevi MICHOU
[e-signed]

Enclosures: 7