



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

The Director General

Brussels,  
B1/RS/JCV

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

Mr Alexander Fanta  
netzpolitik.org  
Rue de la Loi 155  
1000 Brussels  
Belgium

***Advance copy by e-mail:***

[a.fanta.chayk5f5yx@fragdenstaat.de](mailto:a.fanta.chayk5f5yx@fragdenstaat.de)

**Subject: Request for access to documents**

Ref.: Your request of 19 July 2019 registered under reference GestDem 2019/4199

Dear Mr Fanta,

We refer to your e-mail dated 19 July 2019 in which you submitted an application for access to documents within the framework of Regulation (EC) No 1049/2001<sup>1</sup>.

**I. SCOPE OF THE REQUEST**

*“- List of lobby meetings your Directorate-General held with Microsoft 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 Microsoft 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”.*

At the outset, we would like to clarify that we understand that the ‘lobby meetings’ in your request refer to meetings organised to discuss issues related to policy-making and implementation in the Union with organisations or self-employed individuals. Please note

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<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) hereinafter referred to as “Regulation (EC) No 1049/2001”.

that those meetings are normally held by the Commissioner, Directors-General of the Commission or Members of the Cabinet. In view of that, we interpreted your request as concerning only those high level meetings. If you wish so, you may of course submit a new request for access to documents referring to meetings with Commission officials at lower levels of hierarchy within our Directorate-General

Based on the information provided by you, we have identified nineteen documents and their attachments as falling under the scope of your request (hereinafter the 'requested documents'), namely:

1. Email of 01/09/2015 from Microsoft to the the Cabinet of Commissioner Moedas, inviting the Commissioner to join as a keynote speaker a Microsoft event, and its attachment:
  - a. Keynote invitation Microsoft Convergence EMEA Conference.
2. Correspondence exchanged from 01/09/2015 until 18/09/2015 between Microsoft and the Cabinet of Commissioner Moedas, concerning an invitation towards the Commissioner to join as a keynote speaker a Microsoft event, and its
3. Correspondence exchanged on 20/10/2016 between the Cabinet of Commissioner Moedas and Microsoft, referring to a request for a meeting with the Commissioner.
4. Email of 31/10/2016 from the Cabinet of Commissioner Moedas to Microsoft, referring to a request for a meeting with the Commissioner.
5. Correspondence exchanged from 26/04/2017 until 27/04/2017 between the Cabinet of Commissioner Moedas and Microsoft, inviting the Commissioner to a Microsoft event.
6. Correspondence exchanged from 13/11/2016 until 04/01/2017 between the Cabinet of Commissioner Moedas and Microsoft, inviting the Commissioner to a panel discussion.
7. Correspondence exchanged from 22/12/2016 until 10/01/2017 between the Cabinet of Commissioner Moedas and Microsoft, inviting the Commissioner to a CEO reception.
8. Briefing on the meeting between Commissioner Moedas and a representative of Microsoft held on 18/01/2017.
9. Briefing on the meeting between Commissioner Moedas and a representative of Microsoft held on 11/09/2017.
10. Correspondence exchanged from 18/01/2018 and 09/02/2018 between the Cabinet of Commissioner Moedas and Microsoft, asking for a meeting with the Commissioner and the Head of the Cabinet.
11. Email of 15/03/2018 from Microsoft to the the Cabinet of Commissioner Moedas, inviting the Head of the Cabinet to a dinner.
12. Correspondence exchanged from 10/05/2018 until 18/06/2018 between the Cabinet of Commissioner Moedas and Microsoft, inviting the Commissioner to a stakeholder event.
13. Correspondence exchanged from 12/07/2018 until 13/07/2018 between the Cabinet of Commissioner Moedas and Microsoft, inviting as a keynote speaker a Microsoft Data Science & Law Forum on September 27<sup>th</sup> and its attachments:
  - a. Invitation to the Data Science & Law Forum. From doc. 15
  - b. Draft agenda of the Data Science & Law Forum.

14. Email of 13/11/2018 from Microsoft to the the Cabinet of Commissioner Moedas, inviting the Commissioner to a Microsoft event.
15. Correspondence exchanged from 13/11/2018 until 14/12/2018 between the Cabinet of Commissioner Moedas and Microsoft, inviting the Commissioner at a Web Summit on January 29<sup>th</sup>.
16. Email of 14/01/2019 from a representative of Microsoft to the Cabinet of Commissioner on the availability of the Commissioner for a meeting.
17. Curriculum vitae of the representative of Microsoft (14-01-2019).
18. Document containing internal background information concerning a meeting with Microsoft on 23/01/2019.
19. Correspondence exchanged from 11/03/2019 until 19/03/2019 between the Cabinet of Commissioner Moedas and Rasmussen Global, referring to an event co-hosted by Microsoft and Rasmussen Global.

## **II. EXAMINATION UNDER REGULATION (EC) NO 1049/2001**

After a concrete assessment of the requested documents, we are pleased to inform you that partial access can be granted, with the exception of document 17, which must be refused in its entirety. The refused document, as well as the expunged information contained in the disclosed documents must be protected under Article 4(1)(b) of Regulation (EC) No 1049/2001 as regards the protection of privacy and the integrity of the individual, as explained below:

### *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 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<sup>2</sup>.

The refused document, i.e. document under number 17, is the biography of the representative of Microsoft, consisting, therefore, of personal data in its entirety. Furthermore, the disclosed documents contain personal data such as names, functions, office numbers and e-mail addresses of Commission's officials not having the function of senior management staff and of the third parties identified in the documents.

This information clearly constitutes personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725<sup>3</sup>, 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*

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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*, ECLI:EU:C:2010:378, paragraphs 59 and 63. 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 (EU) 2018/1725.

<sup>3</sup> Regulation 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, Official Journal L 205 of 21.11.2018, page 39.

*proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.*

According to Article 9(1)(b) of Regulation (EU) 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. 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, personal data have been withheld from the requested documents and document under number 1a must be refused. Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

### **III. DISCLAIMER AND REUSE OF THE DOCUMENTS**

The requested documents were drawn up for internal use under the responsibility of the relevant service of the Commission or sent by third parties.

With regards to the disclosed documents originating from third parties, please note that these are disclosed for information only and cannot be re-used without the agreement of the originator.

The disclosed documents do not reflect the position of the Commission and cannot be quoted as such.

### **IV. MEANS OF REDRESS**

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 Secretary-General of the Commission at the following address:

**European Commission**  
**Secretary-General**  
**Unit C.1 – Transparency, document management & access to documents**  
**BERL 7/076**  
**B-1049 Brussels**

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

Jean-Eric Paquet

Enclosures: The requested documents expunged from personal data, with the exception of document 17.