



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

Ref. Ares(2019)5809514 - 17/09/2019

Directorate A – Resources, Information and Policy Coordination
Transparency and Evaluation
The Head of Unit

Brussels,
Trade(2019)

By registered letter with acknowledgment of receipt

Alexander Fanta
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Advance copy by email:
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Subject: Your application for access to documents – Ref. GestDem N° 2019/4342

Dear Mr Fanta,

We refer to your e-mail dated 19/07/2019 in which you make a request for access to documents in accordance with Regulation (EC) No 1049/2001¹ (“Regulation 1049/2001”) registered 24/07/2019 under the GestDem reference **2019/4342**.

1. SCOPE OF YOUR REQUEST

In your application, you request access to:

- *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.*

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

In relation to item 1 and 2, we have identified **3 documents** that were summaries of meetings of DG Trade with Microsoft.

As far as item 3 and 4 are concerned, we have identified **9 documents** that were exchanges of correspondence and minutes of meetings between the Commissioner and her Cabinet and Microsoft. A list of these twelve documents is enclosed in Annex I to this reply.

2. ASSESSMENT AND CONCLUSION UNDER REGULATION 1049/2001

In accordance with settled case law², when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001. Such assessment is carried out in a multi-step approach. First, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception. Second, it must examine whether disclosure of the parts of the document in question pose a “*reasonably foreseeable and not purely hypothetical*” risk of undermining the protection of the interest covered by the exception. Third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Articles 4.2 and 4.3 of Regulation 1049/2001, the institution is required “*to ascertain whether there is any overriding public interest justifying disclosure*”.³

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents,⁴ “*the exceptions to that right [...] must be interpreted and applied strictly*”.⁵

Having carefully examined the documents identified above in light of the applicable legal framework, I am pleased to inform you that partial access is given to all documents where only some personal data have been withheld in accordance with Article 4(1)(b) of Regulation 1049/2001. The legal reasoning underlying the protection of these personal data is provided below.

2.1. Protection of privacy and integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that “[*t*]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data”.

The applicable legislation in this field is Regulation (EC) No 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

² Judgement in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

³ *Id.*, paragraphs 37-43. See also judgement in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52 and 64.

⁴ See Regulation (EC) No 1049/2001, recital (4).

⁵ Judgement in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC6 ('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.⁷ 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.⁸

In its judgement in case C-28/08 P (*Bavarian Lager*)⁹, 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.¹⁰

All 12 documents contain personal information such as names, e-mail addresses or telephone numbers that allows the identification of natural persons. In line with the Commission's commitment to ensure transparency and accountability, the names of the senior management of the Commission (at Director level and above) are disclosed.

In principle, the names of organisations and companies as such do not constitute personal data within the meaning of Article 2(a) of Regulation 45/2001. For this reason, the names of organisations and companies are disclosed. In addition, transparency register numbers, which do not allow the identification of an individual staff member of these companies, are disclosed.

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

⁶ Official Journal L 205 of 21.11.2018, p. 39.

⁷ Judgement of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

⁸ Judgement 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.

⁹ Judgement of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

¹⁰ Whereas this judgement 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.

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 application, 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, we consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested without including personal data.

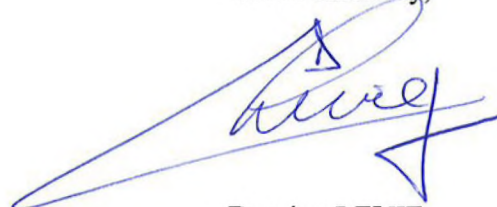
In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

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
Transparency, Document Management & Access to Documents unit SG-C-1
BERL 7/076
BE - 1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Damien LEVIE

Annexes: Annex I: List of documents
 Disclosed documents