



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND  
TECHNOLOGY

The Director-General

Brussels,  
DG CONNECT

Ms. Vicky Cann  
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**REGISTERED MAIL WITH ACKNOWLEDGEMENT OF RECEIPT**

**Subject: Your application for access to documents – GestDem 2020/0490**

Dear Ms Cann,

We refer to your application for access to documents submitted under Article 2(1) of Regulation 1049/2001 on public access to documents (hereinafter, 'Regulation 1049/2001') received on 27/01/2020 and registered on the same day under the above-mentioned reference number. We also refer to our email dated 17/02/2020 (our reference, [Ares\(2020\)997602](#) whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

**1. SCOPE OF YOUR APPLICATION**

In your application, you requested access to the following documents:

*“a list of all lobby meetings held with DG CNECT since 1 January 2019, where the proposed ePrivacy regulation was discussed. The list should include the names of the individuals and organisations attending; the date; and any agendas / minutes / notes produced. I would additionally like to receive any position papers, emails, or other correspondence which relates to the proposed ePrivacy regulation.”*

Given the large number of documents falling within the scope of your request, on 20/02/2020 we contacted you with a view to finding a fair solution based on Article 6(3) Regulation 1049/2001 (our reference, [Ares\(2020\)1079510](#)). By means of our fair

solution proposal, we informed you about the high number of documents that we had already identified as falling within the scope of your application. We also indicated the number of documents per category.

Against this background, you were asked to reduce the scope of your application in such a way that would enable its treatment within the extended deadline of 15+15 working days by specifying the objective of your request and your specific interest in the requested documents. In case you were not in a position to specify such interest, we also proposed to restrict the scope to a maximum of 20 documents which would be chosen from two of the categories of documents indicated. We also informed you that the number of documents identified and assessed would also depend on the volume of the documents and the potential need to consult third parties on their disclosure.

By means of your email of 24/02/2020, you informed us that you would like to limit your scope to “...papers to/from lobbyists, rather than MEPs, inter-institutional correspondence etc...”

## **2. DOCUMENTS FALLING WITHIN THE SCOPE OF YOUR REQUESTS**

The following are the documents which have been identified as falling within the scope as restricted in your reply to our fair solution proposal:

- **Document 1:** Joint position paper received from the Association of Commercial Television in Europe (ACT) and the Association of television and radio sales houses (EGTA), dated 02/04/2019;
- **Document 2:** Position paper received from Digital Europe dated 13/03/2019;
- **Document 3:** Annex I to Document 2
- **Document 4:** Annex II to Document 2
- **Document 5:** Position paper received from an association dated 22/03/2019;
- **Document 6:** Position paper received from the European Smart Energy Solutions Providers (ESMIG) - Executive Summary;
- **Document 7:** Position paper received from ESMIG – Suggested amendments;
- **Document 8:** Position paper from GSMA, the European Telecommunications Network Operators’ Association (ETNO) and Cable Europe;
- **Document 9:** Position paper received from Information Technology Industry (ITI) dated 06/03/2019;
- **Document 10:** Position paper received from a Media company in September 2019;
- **Document 11:** Position paper received from Search and Information Industry Association (SIINDA) in July 2019;
- **Document 12:** Position paper received from SIINDA – update from July 2019;
- **Document 13:** Industry wide position paper received on 12/12/2019

## **3. ASSESSMENT UNDER REGULATION 1049/2001**

Having examined the documents requested under the provisions of Regulation 1049/2001, and taking into account that these documents relate to complaints submitted by third parties, we have come to the conclusion that **8 documents** can be **fully disclosed**, **3 documents** can be **partially disclosed** and disclosure will be **refused** for **2 documents** given that it is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

*a) Full access*

Please find enclosed a copy of **Documents 3, 4, 6-9, 12 and 13**. Please note that some of these documents are also publically available via the following links:

**Document 8:**

<https://etno.eu/downloads/positionpapers/etno-gsmacableurope%20note%20on%20eprivacy%20january%202020.pdf>

**Document 9:**

<https://www.itic.org/dotAsset/8b449af9-107b-4b13-823a-d5bb0685643d.pdf>

**Document 13:**

<https://www.fedma.org/wp-content/uploads/2020/01/20191217-ePR-Breton-Industry-Letter.pdf>

Please note that these documents originate from third parties. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. These documents do not reflect the position of the European Commission and cannot be quoted as such.

*b) Partial access with only personal data redacted*

Parts of **Documents 1, 2 and 11** contain personal data, in particular names, functions, contact details and handwritten signatures of third parties. Disclosure of these parts is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001.

Article 9(1)(b) of Regulation 2018/1725<sup>1</sup>, does not allow for the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to believe that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned. Disclosure must therefore be refused to the aforementioned parts of these documents. We therefore disclose a version of these documents with the aforementioned parts blanked out.

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<sup>1</sup> 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/EC, OJ L 295, 21.11.2018, p. 39.

Please note that **Documents 1, 2 and 11** originate from third parties. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. These documents do not reflect the position of the European Commission and cannot be quoted as such.

*c) Refused access*

We regret to inform you that access cannot be granted for **Documents 5 and 10** on the basis of Article 4(2), first indent of Regulation 1049/2001 (protection of commercial interests).

Article 4(2), first indent of Regulation 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Some parts of **Documents 5 and 10** relate to non-public positions of stakeholder companies concerning the proposed ePrivacy Regulation<sup>2</sup> which will replace the ePrivacy Directive<sup>3</sup>. Such companies did not give their consent to the disclosure of these positions. We consider that these positions constitute commercially sensitive information protected under Article 4(2) first indent of Regulation 1049/2001. Consequently, disclosure must be refused to the aforementioned parts of these documents.

Following the redactions made for personal data (for **Document 10**) for the reasons set out in Section 3(b) of this letter and the aforementioned parts for which disclosure is being refused on the basis of Article 4(2), first indent (for both **Documents 5 and 10**), partial access to the remaining parts of these documents has been rendered meaningless. Therefore access to these documents must be refused.

#### **4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down under Article 4(2) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of the documents. Such an interest must firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of the parts withheld on the basis of this exception in **Documents 5 and 10**, but we have not been able to identify such an interest.

#### **5. CONFIRMATORY APPLICATION**

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.

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<sup>2</sup> COM(2017) 10 final

<sup>3</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)

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

Yours sincerely,

(e-Signed)  
Roberto Viola

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