



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

The Director-General

Brussels, 19<sup>th</sup> October 2020  
CNECT/RV

Mr Kenneth Haar  
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*Advance copy via email:*  
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## **REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT**

**Subject: Your application for access to documents- Ref GestDem 2020/5055**

Dear Mr Haar,

We refer to your email dated 26 August 2020 wherein you make a request for access to documents pursuant to 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 (hereinafter ‘Regulation 1049/2001’), registered under the abovementioned reference number. We also refer to our holding reply, dated 16 September 2020, our reference Ares(2020)4844444, 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**

By your application, you requested access to:

*[...]documents which contain the following information:*

*1) a list of meetings that address the Digital Services Act (from 1. January 2020 till today) of Commissioners Vestager and Breton and their cabinets, DG CONNECT and representatives of the European Internet Forum, the Computer and Communications Industry Association, Uber, the European Holiday Home Association, Sharing Economy, European Digital Media Association and AirBnB.*

*2) minutes and other reports of these meetings;*

*3) all correspondence with entities listed above that address the Digital Services Act, including emails from 1. January 2020 till today). [...]*

Due to the scope of your request, your request has been split between the a) Secretariat-General (SG), under reference number GestDem 2020/5056 and b) Directorate-General for Communications Networks, Content and Technology (DG CONNECT), under reference number GestDem 2020/5055. This reply relates only to the reference number GestDem 2020/5055 and to documents held by DG CONNECT and the Cabinet of Commissioner Breton. You will receive the reply related to GestDem 2020/5056 from the SG in due course.

We consider your request to cover documents held up to the date of your application, i.e. 26 August 2020.

## **2. DOCUMENT FALLING WITHIN THE SCOPE OF THE REQUEST**

We have identified the following documents as falling within the scope of GestDem 2020/5055:

- Back to Office Report (BTO) of the meeting between DG CONNECT and Airbnb on DSA on 27 January 2020 (**Document 1**)
- Email from Airbnb to Commissioner Breton, dated 30 January 2020 (**Document 2**) and its attachment, Letter from AirBnB to Commissioner Breton, dated 29 January 2020 (**Document 3**)
- Email from Airbnb to DG CONNECT, dated 4 February 2020 (**Document 4**) and the attachment, Airbnb – Perspectives for the New Commission (**Document 5**)
- Reply from DG CONNECT to AirBnB, dated 27 February 2020 (**Document 6**)
- Email from Airbnb to DG CONNECT, dated 23 March 2020 (**Document 7**) and its attachment, Airbnb and the Digital Services Act (**Document 8**)
- Email from Airbnb to Commissioner Breton, dated 20 July 2020 (**Document 9**) and its attachment, Letter from AirBnB to Commissioner Breton, dated 17 July 2020 (**Document 10**)
- Email exchanges between DG CONNECT and Computer & Communication Industry Association (CCIA) from 23 and 26 March 2020 (**Document 11**)
- Email from CCIA to DG CONNECT, dated 7 April 2020 (**Document 12**) and its attachment, CCIA's Discussion Paper on the Digital Services Act (**Document 13**)
- Email from CCIA to DG CONNECT, dated 22 April 2020 (**Document 14**)
- BTO of the call with CCIA Europe members on DSA package, 16 June 2020 (**Document 15**)
- CCIA's feedback on the European Commission's roadmap on the Digital Services Act aiming at deepening the internal market and clarifying responsibilities for digital services, 30 June 2020 (**Document 16**)
- CCIA Feedback on Inception Impact Assessment for Proposed Ex-Ante Market Regulation, 30 June 2020 (**Document 17**)
- BTO of the call with CCIA on 7 July 2020 (**Document 18**)
- Email exchanges between DG CONNECT and CCIA between 25 May 2020 and 7 July 2020 (**Document 19**)
- Email from CCIA, dated 8 July 2020 (**Document 20**)
- Email from European Digital Media Association (Edima) to DG CONNECT, dated 7 January 2020 (**Document 21**) and its attachments, the Letter from Edima,

dated 7 January 2020 (**Document 22**) and Edima's paper, 'Responsibility Online' (**Document 23**)

- Email from Edima to DG CONNECT's Director-General, dated 8 January 2020 (**Document 24**)
- BTO of the meeting between DG CONNECT and Uber, 17 June 2020 (**Document 25**)

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

Following an examination of the identified documents under the provisions of Regulation 1049/2001 and taking into account the opinion of the third parties, we have arrived at the conclusion that full access can be granted to three documents and partial access can be granted to the remaining documents. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001. Please note that parts of the documents have been also blanked out as being outside the scope of the request.

#### **A. Full disclosure**

Documents 5, 8 and 13 are fully disclosed.

#### **B. Partial disclosure**

##### *(i) Protection of privacy and integrity of individuals*

Full disclosure of Documents 1-4, 6-7, 9-12, 14-25 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- Names, initials, functions and contact information of Commission staff members not pertaining to the senior management;
- Names, functions and contact information of other natural persons;
- Handwritten signatures of natural persons.

Article 9(1)(b) of the Data Protection Regulation<sup>1</sup> does not allow 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, I conclude that, pursuant to Article 4(1)(b) 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 think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

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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.

*(ii) 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.

Parts of Document 20 contain sensitive business information, which was shared with the Commission in a confidential manner. There is a real and non-hypothetical risk that disclosure of these parts would undermine CCIA's and the author's commercial interests, including the intellectual property rights. Furthermore, these parts contain information related to non-public strategies and methods used by the industry members in their business models. Disclosure of this information would seriously affect the commercial interests of CCIA member companies.

Consequently, the above-mentioned parts of Document No 20 have been blanked out.

*(iii) Protection of the decision-making process*

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that '[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

Parts of Document 15 relate to the ongoing decision-making process in relation to the Digital Services Act package.

Disclosure of these parts would seriously undermine the protection of the ongoing decision-making process, as it would reveal preliminary views and policy options. Therefore, the exception laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001 applies.

Consequently, the above-mentioned parts of Document No 15 have been blanked out.

**4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(2) and Article 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of 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 aforementioned parts of the documents but we have not been able to identify such an interest.

## **5. REUSE OF DOCUMENTS**

You may reuse Documents 1, 6, 15, 18, 25 and the parts of Documents 11 and 19, which have been produced by the European Commission free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that Documents 1, 15, 18 and 25 were drawn up for internal use under the responsibility of the relevant services of DG CONNECT. They solely reflect the services' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 2-5, 7-10, 12-14, 16-17, 20-24 and parts of the Documents 11 and 19 originate from third parties. Please note that they are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

## **6. CONFIRMATORY APPLICATION**

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 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 faithfully,

(e-signed)

Roberto Viola

Enclosures: (25)