EUROPEAN COMMISSION

Brussels, 11.10.2019
C(2019) 7468 final

[redacted]
POLITICO
Rue de la Loi 62
1040 Brussels
Belgium

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001[1]

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2019/1317

Dear [redacted],

I refer to your email of 27 May 2019, registered on the same day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents[2] (hereafter 'Regulation (EC) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial request of 7 March 2019, addressed to the Directorate-General for Communication Networks, Content and Technology, you requested access to:

- 'a list of lobby meetings held with Communication Networks, Content and Technology with Amazon or its intermediaries. The list should include: date, individuals attending + 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 […] DG (including the Commissioner and the Cabinet) and Amazon or any intermediaries representing its interests;
- all documents prepared for the meetings and exchanged in the course of the meetings between both parties'.

1 Official Journal L 345 of 29.12.2001, p. 94.
2 Official Journal L 145 of 31.5.2001, p. 43.

These documents should cover the period between November 2014 and March 2019.

Since 25 simultaneous requests for access to documents concerning meetings between several Directorates-General of the European Commission and Amazon, Google, Microsoft or Facebook were introduced on behalf of your organisation, Politico, the Secretariat-General sent you a fair solution proposal on 26 March 2019, registered under reference Ares(2019)2103936.

In this proposal, the Secretariat-General informed you that the European Commission has received a very high number of very similar requests for access to documents submitted by you but also by other applicants concerning lobby meetings held within the European Commission with Amazon, Google, Microsoft or Facebook or persons representing their interests. It explained that although the applicants are different entities, the requests were almost identical and were made at the same time. The circumstances of the introduction of these requests, their timing, their scope, as well as their wording gave the impression that they result from a coordinated action. It referred to the Court of First Instance[3] which confirmed in its *Ryanair* judgment[4] that Article 6(3) of Regulation (EC) may not be evaded by splitting an application into several, seemingly separate, parts. It informed you that, as stated by the EU Courts, the European Commission must respect the principle of proportionality and ensure that the interest of the applicant for access is balanced against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration.

The Secretariat-General described in detail the actions needed in order to handle these requests and concluded that the handling of your numerous simultaneous requests could not be completed within the normal time limits set out in Article 7 of Regulation (EC) No 1049/2001. It underlined that, in accordance with the case law of the EU Courts, a fair solution can only concern the content or the number of documents applied for, not the deadline for replying.[5] Based on Article 6(3) of Regulation (EC) No 1049/2001, it asked you to specify your specific interest in the documents requested[6], and whether you could narrow down the scope of your request, so as to reduce it to a more manageable number. In order to help you to narrow down your wide-scoped request, it transmitted to you lists of the lobby meetings, which took place since 1 December 2014 between the Director-General concerned, the Commissioner or a member of his Cabinet and Amazon, Google, Microsoft or Facebook or any intermediaries representing their interests.[7] The Secretariat-General proposed one of the following alternative options for limiting the excessive administrative burden relating to the handling of your wide-scoped request, made as seemingly separate 25 simultaneous requests:

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3 Now 'General Court'.

4 Judgment of the General Court of 10 December 2010, *Ryanair v Commission*, T-494/08, EU:T:2010:511, paragraph 34.

5 Judgment of the Court of Justice of 2 October 2014, *Guido Strack v Commission*, C-127/13 (hereafter '*Guido Strack v Commission'*), EU:C:2014:2250, paragraphs 26-28.

6 Ibid, paragraph 28; Judgment of the General Court of 22 May 2012, *EnBW Energie Baden-Württemberg v Commission*, T-344/08, EU:T:2012:242, paragraph 105.

7 These lists are publicly available under the link: http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en#en.

- Restrict the temporary scope of your wide-scoped request to a period of your choice not exceeding six months and limit its scope only to the meetings published in the Transparency Register;
- Limit the number of your seemingly separate requests to 10 requests of your choice;
- Limit the scope of your requests to 20 meetings of your choice published in the Transparency Register for each one of the companies you are interested in (Google, Amazon, Microsoft and Facebook).

On 2 April 2019, you replied to the proposal indicating that you were 'not in the position to accept any of the solutions […], which [you] don't consider fair'. You stated that '[your] decision to file 24 separate requests to various Directorates-General was not a covert attempt to circumvent the rules set in Regulation 1049/2001, but a deliberate choice that responds to rather basic knowledge of how EU policy and decision making works'. You explained that 'filing these requests separately was a deliberate choice as each DG holds meetings with stakeholders independently and at differentiated times. It is also safe to assume that each DG has access to their own set of documents, including those that would fall under the scope of [your] request.' You added further that, in your view, 'it is not reasonable to expect each and every DG will need to undergo the same process […] in order to respond to [your] requests. Some DGs will identify more documents than others, some of these documents will be more sensitive than others, and some might not hold documents at all. At the same time, some DGs might have more staff dedicated to access to documents purposes than others, which would result in differentiated levels of effort time-wise and human resource-wise.'

You indicated that 'whether [yours] and other requests were or were not filed as a result of a "coordinated action" is not incumbent in this case'. You underlined that any 'possible "coordinated action" between [you] and other requesters, would not, in any case, fall under the scope of the cited General Court jurisprudence. It would, however, fall under the scope of Article 12 of the EU Charter of Fundamental Rights, which grants EU civil society the right to assemble and associate in order to work together, in a coordinated manner, for instance, to advance a political and civil matter such as transparency of EU institutions.'

As to your 'specific interest in the documents requested', you stated that 'the content and the wording of [your] initial requests are self-explanatory: [you were] interested in knowing about the interactions between Commission branches and Amazon, for the sake of knowing about the interactions between Commission branches and Amazon […], as [you] believe this matter is in the public interest.' Moreover, you referred to previous requests made, where solutions were accepted 'such as, instead of reducing the scope of the initial request, splitting the request into various individual requests to be processed separately and consecutively' and concluded 'such a solution would be much more reasonable and adequate than the ones proposed by the Commission'. Finally, you stated that 'a fair solution - which [you were] willing to debate and reach - would require an agreement from the Commission on these two basis:

1. that [your] requests be processed individually by each of the DGs [you] initially filed the requests to, with which [you would] be willing to find individual fair solutions depending on the number of documents identified by each DG, and the workload that [your] request would require from each DG individually;
2. that [your] requests be treated separately from any other requests, as similar as they might be, filed previously or simultaneously. [You are] only interested in documents related to Amazon, and the way [your] requests are handled should reflect that limitation.

Should the European Commission - and its DGs - agree on these two basis, [you] would of course be willing to reduce and/or limit the scope of [your] request per individual DG, if the situation within a DG would require to do so.

On the other hand, [you have] agree[d] to limit the intermediaries [you were] interested in to law firms and/or consultants directly representing Amazon in meetings.'

As a preliminary remark, I would like to clarify that the term 'lobby meeting' is defined in Article 2 the Commission Decision of 25 November 2014 on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals (2014/838/EU, Euratom)[8] and Commission Decision of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals (2014/839/EU, Euratom)[9].

The Directorate-General for Communication Networks, Content and Technology received on the same day several requests for access to documents from you and other applicants related to lobby meetings with Amazon, Google, Microsoft or Facebook. The estimated number of documents identified by the Directorate-General as falling within the scope of these requests was more than 185 documents, even after limiting the scope to intermediaries of Facebook, Amazon, Microsoft or Google to law firms and/or consultants directly representing them in meetings.

At the time of your request, the Directorate-General for Communication Networks, Content and Technology was already processing another request from your organisation, where it identified 17 documents as falling within the scope, and granted (full or partial) access to 11 documents. It refused access to 6 documents.

In order to treat your request, and that of other applicants, the Directorate-General for Communications Networks, Content and Technology would have to carry out a certain number of tasks listed below:

[8] Official Journal L 343 of 28.11.2004, p. 19.
[9] Official Journal L 343 of 28.11.2004, p. 22.

- search for documents relating to meetings with Amazon, Google, Microsoft or Facebook both at the level of the Directorate-General or the service concerned and at the level of the Commissioner and his Cabinet in several document management systems of the Commission;
- retrieval and establishment of a complete list of the documents falling under the scope of your requests;
- scanning of the documents which are in paper format;
- preliminary assessment of the content of the documents in light of the exceptions of Article 4 of Regulation EC (No) 1049/2001;
- assessment of the further procedural steps to undertake, for example whether third party consultations should be made;
- (possibly) third-party consultations under Article 4(4) of Regulation 1049/2001 and (possibly) a further dialogue with the third party originators of documents falling within the scope of your request;
- final assessment of the documents in light of the comments received, including of the possibility of granting (partial) access;
- redactions of the relevant parts falling under exceptions of Regulation EC (No) 1049/2001);
- preparation of the draft reply for each of your requests by each of the services concerned;
- (possible) consultation of the Legal Service;
- finalisation of the replies at administrative level and formal approvals of the draft decisions;
- final check of the documents to be (partially) released (if applicable) (scanning of the redacted versions, administrative treatment,…) and dispatch of the replies.

Given the complexity of the tasks and the number of documents, amounting to more than 185, the Directorate-General for Communications Networks, Content and Technology concluded that it would not be possible to carry out the assessment required under Regulation (EC) No 1049/2001, within the time limits provided for in that regulation.

Consequently, the Directorate-General for Communications Networks, Content and Technology unilaterally restricted the scope of your initial application to documents related to meetings between the Director-General or members of the Cabinet and Amazon that are listed in the Transparency Register for the period 1 January 2017 and the date of your request.

Based on the above, the Directorate-General for Communications Networks, Content and Technology has identified the following documents as falling under the scope of your request:

– Briefing for Vice-president Ansip for the Roundtable of 9 January 2018 between Vice-president Ansip, Commissioner Gabriel and various online platforms, reference SG-PDT-VPs/4511 (hereafter ‘document 1’);

- Briefing for Commissioner Gabriel of the Roundtable of 9 January 2018 between Vice-president Ansip, Commissioner Gabriel and various online platforms, reference CAB GABRIEL/232 (hereafter 'document 2'), which contains the following annexes:
    - List and description of invited online platforms, (hereafter 'document 2.1');
    - Background document sent to invited online platforms, (hereafter 'document 2.2');
    - Detailed agenda sent to invited online platforms, (hereafter 'document 2.3');
    - Details of participants representing online platforms, (hereafter 'document 2.4');
- Notes of the technical meeting with various online platforms of 9 January 2018, reference Ares(2019)6008320 (hereafter 'document 3');
- Notes of the high-level meeting with platforms of 9 January 2018, reference Ares(2019)6008434 (hereafter 'document 4');
- Notes of the roundtable with platforms of 9 January 2018, reference Ares(2019)6008544 (hereafter 'document 5');
- Summary of discussions of the roundtable with platforms of 9 January 2018, reference Ares(2019)6008640 (hereafter 'document 6');
- European Commission Statement regarding removing illegal content online of 8 January 2018, reference Ares(2019)3109197 (hereafter 'document 7');
- Email of 28 September 2018 requesting a meeting with Eric Peters, Cabinet Member of Commission Gabriel, reference Ares(2019)5964190 (hereafter 'document 8');
- Steering Brief for Director-General Roberto Viola for a meeting with Amazon on 28 November 2018, reference BASIS 7403 (hereafter 'document 9');
- Back to Office report for a meeting with Amazon on 28 November 2018, reference Ares(2019)1121472 (hereafter 'document 10');
- Email of 8 February 2019 requesting a meeting with Director-General Roberto Viola, reference Ares(2019)1765720 (hereafter 'document 11') which contains the following annexes:
    - Biography of Amazon representative (hereafter 'document 11.1');
    - Invitation for a meeting (hereafter 'document 11.2');
- Exchange of emails concerning logistics of the meeting starting on 26 February 2019, reference Ares(2019)1765949 (hereafter 'document 12');
- Steering Brief for Director-General Roberto Viola for a meeting with Amazon on 26 February 2019, reference BASIS 7646 (hereafter 'document 13');
- Back to Office report for a meeting with Amazon on 26 February 2019, reference Ares(2019)1761449 (hereafter 'document 14').

In its initial reply of 10 May 2019, the Directorate-General for Communication Networks, Content and Technology granted:

- full access to documents 2.2 and 7;

- wide partial access to documents 1, 2, 11, 12, and 14, subject only to the redaction of personal data based on the exception of Article 4(1)(b) (protection of privacy and integrity of the individual) of Regulation (EC) No 1049/2001;
- partial access to document 2.3, 8, 9, 10, 11.2 and 13 based on the exceptions of Article 4(3) (protection of the ongoing decision-making process) and the first indent of Article 4(2) (protection of commercial interests) of Regulation (EC) No 1049/2001;
- refused access to documents 2.1, 2.4, 3, 4, 5, 6, and 11.1 based on the exception of Article 4(1)(b) (protection of privacy and integrity of the individual), Article 4(3) (protection of the ongoing decision-making process) and the first indent of Article 4(2) (protection of commercial interests) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position. More specifically, you provide detailed arguments contesting the way the unilateral restriction of the scope was done at initial stage which I will assess below.

In addition, you request a review of the position of the Directorate-General for Communication Networks, Content and Technology as far as it applied, too extensively in your view, the exceptions provided for in Article 4(3), first paragraph (protection of the decision-making process) of Regulation (EC) No 1049/2001. You expressly mention that you do not request the personal data present in the document, so they will not be in the scope of this review.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

As a preliminary remark, I would like to clarify the scope of this confirmatory decision. Please note that pursuant to Article 7, paragraph 2 of Regulation (EC) No 1049/2001, the purpose of a confirmatory application is to review the initial position of the Directorate-General in question to fully or partially refuse access to the documents which have been identified at initial stage.

Hence, the review performed by the Secretariat-General at confirmatory stage will focus on two main aspects :

- The assessment of the way the unilateral restriction was performed at initial stage;

- The assessment of the application to this extend of the exceptions provided for in Article 4(3), first paragraph (protection of the decision-making process) and Article 4(2) first indent (protection of commercial interests) of Regulation (EC) No 1049/2001 to the documents identified at initial stage.

Please note that the scope of this confirmatory decision would not extend to the analysis of new elements raised in your application and to elements unrelated to the ones mentioned above or unrelated to the question of the right to access to documents in general.

Notwithstanding the above, I would like to clarify that the mention of the 'Chatham house exception' at initial stage, was not intended to replace the exceptions provided for in Article 4 of Regulation (EC) No 1049/2001. It was mentioned as an additional argument which in no circumstances can be used solely to justify the refusal to grant access to a specific document.

Taking into account the above explanations, the European Commission has carried out a review of the initial position of the Directorate-General for Communications Networks, Content and Technology.

Following this review, I regret to inform you that I have to confirm the position of the Directorate-General for Communications Networks, Content and Technology, insofar as the unilateral restriction of the scope of your initial application is concerned.

As regards your claim that the exceptions provided for in Article 4 of Regulation (EC) No 1049/2001 were applied too extensively, I can inform you that further access is granted to documents 2.1, 2.3, 3, 4, 5, 6, 8, 9, 10, 11.2 and 13.

2.1. Unilateral restriction of the scope of the initial application

In your confirmatory application, you contest the position of the Directorate-General for Communications Networks, Content and Technology, as regard the unilateral restriction of the scope of your (initial) application. You also contest the fact this Directorate-General did not engage further with a view to finding a fair solution.

As a preliminary remark, I would like to clarify, that Regulation (EC) No 1049/2001 clearly stipulates that the recipient of any request for access to documents is the institution as such. This legal context is not altered by the fact that it is possible to send a request for access to documents to the relevant Directorate-General or department. In conclusion, the requests addressed to these entities continue to be requests addressed to the European Commission and the workload related to them is also incumbent on the European Commission. Although your requests were addressed to separate Directorates-General, they form a wide-scope request, as the workload they imply will have to be assumed by the European Commission as the institution.

As mentioned above, at the time of your request, the Directorate-General for Communication Networks, Content and Technology was already processing one other request from your organisation, where it identified 17 documents as falling within the scope, and granted (full or partial) access to 11 documents. In fact, Politico has submitted 72 requests for access to documents this year alone, out of which 25 requests were submitted by you personally.

Indeed, the European Commission handled simultaneously 25 from the Politico and 66 very similar requests from other applicants whose requests had the same wording.

You state that it is not incumbent in this case whether these requests resulted from a coordinated action or not and refer to the right of the EU civil society 'to assemble and associate in order to work together, in a coordinated manner, for instance, to advance a political and civil matter such as transparency of EU institutions'. I note that you do not confirm or infirm that your requests form part of a coordinated action. I would like to point out that the beneficiaries under Regulation (EC) No 1049/2001 are 'any citizen of the Union, and any natural or legal person', as specified in Article 2 of that regulation. Although any citizen or legal person has the right to request documents from an institution, the civil society as such is not stipulated among the beneficiaries. Coordinated simultaneous requests for access to documents addressed to a specific institution neither correspond to the conception 'an application for access to a document' as stipulated in Article 7(1) of Regulation (EC) No 1049/2001 nor can they be handled under the deadlines and conditions stipulated in that regulation. They do not only create an extremely heavy workload for a multitude of services, but they also cause a serious perturbation in its functioning.

Any public administration with limited resources has the obligation to safeguard the interests of good administration and to ensure the proper handling of confirmatory applications originating from other applicants. This has been repeatedly acknowledged by the Court of Justice. In the case at hand, it flows from the principle of proportionality that processing this and the other requests simultaneously received by the European Commission would involve an inappropriate administrative burden. The 'self explanatory' interest you have in receiving the requested documents has to be balanced against the workload resulting from the processing of this and your other applications for access in order to safeguard the interests of good administration.[10] In this particular case, the volume of your requests, their wide scope, their simultaneous introduction and the circumstances under which they were introduced created an administrative burden which was particularly heavy and exceeded the limits of what may reasonably be required.

The fact that since 2018 your organisation has filed 256 initial and confirmatory requests only reinforces this conclusion.

In this particular case, the original scope of your initial application, covers 64 documents. Indeed, the total number of documents corresponding to the initial scope of all the requests addressed to the Directorate-General for Communications Networks, Content and Technology on lobby meetings with Facebook, Amazon, Microsoft or Google amounts to 185, with a total of more than 1133 pages. According to the preliminary estimates based on past experience, such assessment (which would involve the tasks listed above) would require the workload corresponding to more than 739 working days.

[10] Judgments of the Court of Justice of 6 December 2001, *Council v Hautala*, C- 353/99 P, EU:C:2001:661, paragraph 30, and *Guido Strack v Commission*, cited above, paragraph 27.

These estimates also take into account the fact that the staff concerned in the Directorate-General for Communications Networks, Content and Technology and several other Directorates-General would have to deal with other tasks and applications in parallel with the handling this initial application of yours and with other several simultaneous applications you have made, as well as other very similar applications received by other applicants.

In your confirmatory application, you argue that according to Article 6(1) of Regulation (EC) No 1049/2001 you are not obliged to state reasons for your application. While this is the case for normal requests for access to documents, the Court of Justice recognised in its judgment in *Guido Strack v Commission*[11] that in case of wide-scope requests (requests that involve a very long document or to a very large number of documents) 'institutions may, in particular cases in which the volume of documents for which access is applied or in which the number of passages to be censured would involve an inappropriate administrative burden, balance the interest of the applicant for access against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration'. This practice was also recognised by the Court in its judgment in *EnBW Energie Baden-Württemberg v Commission*. [12]

You further argue that, notwithstanding the fact that you weren't obliged to provide any reasons for your request, you did provide a justification in saying that your request was self-explanatory, I quote: 'I am interested in knowing about the interactions that have taken place between Commission branches and Amazon'. However, this statement does not explain your particular interest in the requested documents. As to the limitation of the scope of the request to intermediaries, namely 'law firms and/or consultants directly representing Amazon in meetings', this had no significant impact in reducing the scope of your request. You do not dispute that the handling of your request would create unreasonable workload. However, you contest the fact that the Directorate-General for Communications Networks, Content and Technology did not engage further with you with the view of agreeing a fair solution with you.

On 2 April 2019, when you replied to the fair solution proposal of the Secretariat-General, the remaining time limit to reply to your initial application was 16 working days. The Directorate-General for Communications Networks, Content and Technology was already processing another simultaneous application (GESTDEM 2019/1355) from your organisation. Striving to provide you with a reply respecting the legal time limits imposed by Regulation (EC) No 1049/2001, the Directorate-General for Communications Networks, Content and Technology opted to grant you partial access to 13 documents. This solution is both reasonable, particularly given the context of your requests, and favourable to your right of access. The practice to which you refer, namely of dealing with wide-scoped requests in batches, is neither prescribed by Regulation (EC) No 1049/2001 nor would it be proportionate given the context of your requests and the documents you had already received by several other Directorates-General.

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11 *Guido Strack v Commission*, cited above, paragraphs 26-28.

12 Judgment of the General Court of 22 May 2012, *EnBW Energie Baden-Württemberg v Commission*, T-344/08 P, EU:T:2012:242, paragraph 105.

The Secretariat-General had genuinely investigated all other conceivable options to handle with all your requests and had proposed to you several options to reduce the scope of your request; however, none of these options was acceptable to you. Since you have not explained in detail your particular interest, as requested, the Directorate-General for Communications Networks, Content and Technology proceeded to the specific and individual examination of the number of documents it could reasonably handle in the remaining time.

Please note that according to the case law of the EU Court (referred to also in the initial reply of the Directorate-General for Communications Networks, Content and Technology), the fair solution under Article 6(3) of Regulation (EC) No 1049/2001 may concern only the number and content of the documents applied for but not the deadline for replying. [13]

Regarding your desire to 'rectify its unilateral solution by widening the scope of [your] request in order to include meetings held with Amazon and intermediaries (per the restricted definition of "intermediaries" [you] have already provided) with middle and lower-level officials', please note that given the context described above, I consider that the unilateral restriction of the scope of your request was justified. Consequently, I conclude that the decision of the Directorate-General for Communications Networks, Content and Technology to unilaterally restrict the scope of your initial application was in line with the principle of proportionality and consistent with the applicable case law of the EU Courts.

2.2. Protection of the decision-making process

The second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 provides that '[a]ccess to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

Documents 9 and 13 were clearly drawn-up for internal use. They are two internal steering briefs prepared by the staff of the Directorate-General for Communication Networks, Content and Technology for its Director-General in preparation for two meetings with Amazon. They are meant to provide the Director-General with individual opinions and suggestions on the line to take with the purpose of preparing him for the meeting. Internal opinions of Commission services on similar subjects may diverge in view of the various policies they are pursuing. Consequently, the opinions of the services, expressed in internal briefings, reflect the perspective of the author and his internal suggestions.

[13] Judgment in *Guido Strack v Commission*, cited above, paragraph 26.

It is important that the Commission can present, explain and defend its initiatives without having to disclose internal views expressed from a particular perspective by individual staff members. Indeed, Commission services working on online terrorist are experiencing pressure from non-governmental organisations, the industry and other stakeholders lobbying for or against the Commission proposal. This fact is reinforced by the number and content of amendments tabled by the European Parliament to the Commission's proposal.

Disclosing specific parts of the briefing aiming to present the personal perspective of the authors to the Director-General would create unjustified expectations of the public and interested parties. In turn, this would risk increasing undue pressure on the Commission, thereby seriously undermining its current and future decision-making process and its margin of manoeuvre.

Releasing these internal opinions is likely to bring a serious harm to the decision-making process concerned, as it would deter staff members of the European Commission from putting forward their views on this and other related matters in an open and independent way and without being unduly influenced by the prospect of disclosure.

Indeed, as the General Court has held, 'the possibility of expressing views independently within an institution helps to encourage internal discussions with a view to improving the functioning of that institution and contributing to the smooth running of the decision-making process'.[14]

Therefore, public release of the relevant withheld parts of documents 9 and 13 is likely to bring a serious harm to the decision-making process by severely affecting the ability of the European Commission to hold frank internal discussions on issues related to the interaction with private stakeholders. Given the likelihood of the internal debate being severely impoverished by the disclosure of the internal opinions, I consider that this risk is reasonably foreseeable and non-hypothetical.

Please note that, given the limited volume of the relevant redacted parts, it is not possible to give more detailed reasons justifying the need for confidentiality without disclosing the opinion of the staff members and, thereby, depriving the exception of its very purpose.[15]

In light of the above, the relevant undisclosed parts of documents 9 and 13 should be protected in accordance with Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001.

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14 Judgment of 15 September 2016, *Phillip Morris v Commission*, T-18/15, EU:T:2016:487, paragraph 87.

15 Judgment of the General Court of 24 May 2011, *NLG v Commision*, Joined Cases T-109/05 and T-444/05, EU:T:2011:235, paragraph 82.

2.3. Protection of commercial interests of a natural or legal person

Article 4(2), first indent, of Regulation (EC) No 1049/2001 provides that '[t]he 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'.

Some paragraphs that were initially redacted as falling under the scope of Article 4(3), first paragraph of Regulation (EC) No 1049/2001. However, after review, they are considered to fall under Article 4(2), first indent, of Regulation (EC) No 1049/2001.

These redacted parts represent opinions, positions, strategies and concerns of Amazon, which are not public, on certain policy approaches of the Commission. These constitute commercially sensitive information the public disclosure of which would seriously affect Amazon's competitive position since it would put in the public domain information that could be used by their competitors and other parties who would gain access to information about the company's activities and thus provide a competitive advantage in the market.

Based on the foregoing, it is considered that there is a real and non-hypothetical risk that public access to these parts of these documents would seriously undermine Amazon's commercial interests or reputation.

Consequently, I conclude that access to the above-mentioned information must be refused based on the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) and Article 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

As a preliminary remark, it must be noted that the General Court recently confirmed again that the right of access to documents does not depend on the nature of the particular interest that the applicant for access may or may not have in obtaining the information requested.[16]

In your confirmatory application, you do not put forward any specific arguments to establish the existence of an overriding public interest. You invoke general considerations such as transparency and public accountability. In that regard, I would like to refer to the judgment in the *Strack* case, where the Court of Justice ruled that in order to establish the existence of an overriding public interest in transparency, it is not sufficient to merely rely on that principle and its importance. Instead, an applicant has to show why in the specific situation the principle of transparency is in some sense

[16] Judgment of the General Court of 27 November 2018, *VG v Commission*, joined Cases T-314/16 and T-435/16, EU:T:2018:841, paragraph 55.

especially pressing and capable, therefore, of prevailing over the reasons justifying non-disclosure.[17]

Therefore, I conclude that these considerations of a general nature and would not outweigh the interests protected under Article 4(2) and (3) of Regulation (EC) No 1049/2001.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting (further) partial access to the documents requested.

For the reasons explained above, wider partial access is now granted to documents 2.1, 2.3, 3-6, 8-10, 11.2 and 13 without undermining the interests described above.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

CERTIFIED COPY
For the Secretary-General,

[redacted]

EUROPEAN COMMISSION

For the Commission

[redacted]

Enclosures: (11)

[17] Judgment of the Court of Justice of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 131.