



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate D - Twin Transition, Economic & Social Affairs
SG.D.1 - Digital Transition, Industry & Single Market

Brussels
SG.D.1/TKV

Mathias Schindler
Hermann Mattern-Promenade 25
14469 Potsdam
Germany

By email:
mathias.schindler@gmail.com and
[ask+request-10903-
b40cf1c0@asktheeu.org](mailto:ask+request-10903-b40cf1c0@asktheeu.org)

**Subject: Your applications for access to documents – GESTDEM 2022/1810
and GESTDEM 2022/1820**

Dear Mr Schindler,

We refer to your emails of 26 March 2022 in which you make two requests 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 on 28 March 2022 and 6 April 2022 respectively under the above-mentioned reference numbers. We also make reference to our requests for clarification, dated 19 April 2022 and 29 April 2022, our references Ares(2022)3080897 and Ares(2022)3331558. You replied via email on 19 April 2022 and 29 April 2022 respectively following which the time limit for handling your applications was 15 working days pursuant to Article 7(3) of Regulation 1049/2001. We further refer to our emails of 13 May 2022 and 23 May 2022 respectively informing you about the extension of the deadline, our references Ares(2022)3654943 and Ares(2022)3872746.

By your applications, you request access to documents with identical information from different sources: from *Mr Whelan and his team*, and from the *Office of the President of the European Commission and her cabinet members*. Given that Mr Whelan and his team are part of the *Office of the President of the European Commission and her cabinet members*, your requests overlap in this respect, and this reply therefore concerns both of the above-mentioned applications for access to documents. You have further clarified that your application for access to documents extends to *any other place within the SecGen*.

Therefore, by your applications, you request access to the following:

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information held by you and your team.

All information in the context of the Digital Markets Act (DMA) concerning
** remuneration for digital content OR*

** the role of publishers OR*

** rules on fairness for the provision of services OR*

** the inclusion of search engines in the context of the DMA (in particular in the context of article 6) OR*

** FRAND provisions OR*

** the relationship of the DMA with the Copyright in the Digital Single Market Directive OR*

** any communication with publishers or their representatives, associations or people acting on their behalf in the context of the DMA*

For the avoidance of doubt, the term "information" and "documents" should be understood as broadly as possible and it should definitely include such information and documents that the Commission considers "short-lived" or "unimportant", including letters, correspondence, memos, drafts, meeting notes, records regardless of medium, language or format.

If you hold information in an electronic format, I am asking for an electronic copy of such information in its original data format.

The scope of this request includes but is not limited to any proposals, such as drafting suggestions or table documents for Art 6.1.kb and the relevant recitals in preparation for or during the Digital Markets Act trilogue of 24 March 2022. I want third party communication to be included in the scope of this request.

I am happy to grant you a reasonable amount of time for the required third party consultations regarding the release of content in possession of the Commission provided by third parties, such as lobbyists, outside legal counsel and member states. If permitted by applicable law, I am looking also for the names and affiliations of people who have submitted such information and I am asking for only the minimum amount of redaction of such names if required by law.

And really, really, since this has been an issue in the past: If a Commissioner, Cabinet or staff member of a DG unit is sending a comment, email, text message, draft or any other piece of data to another Commissioner or staff member in its own or a different DG falling under the scope of this request, I want a copy of this document. If you - for whatever reason - do not consider it relevant to be included in the EU eDomec or ARES system, it does not lose its property as a document under Regulation 1049/2001.

If you end up considering to invoke exceptions such as those concerning ongoing legislative work, I am willing to accept partial delivery of documents and kindly

ask you to indicate the time at which other documents would no longer be covered by such an exception to allow for a speedy re-filing of this request.

A number of documents are currently undergoing third party consultations and cannot yet be disclosed. Apart from those documents, the following documents fall within the scope of your application:

1.1.1. EMMA & ENPA request for a meeting to the President of the European Commission with a high-level delegation of European press public

[...]

1.1.3. Ares(2020)5453482 RE Ares(2020)7522647 EMMA & ENPA request for a meeting

1.2.1. Ares(2020)7522647 European Magazine Media Association (EMMA) and European Newspaper Publishers (ENPA) 2

[...]

1.2.3. Ares(2021)6211416 Minutes meeting Cabinets with EMMA and ENPA - 7 October 2021 Final

[...]

1.3.2. Ares(2022)3961930 - EMMA & ENPA - Paper by Prof. Hoeppe on extending fair and non-discriminatory access (6.1k) 1

1.3.3. Ares(2022)3961930 - EMMA & ENPA - Paper by Prof. Hoeppe on extending fair and non-discriminatory access (6.1k) 2

[...]

1.3.5. Ares(2022)3961902_DMA_Comments on Article 6-1-k_Fair und Non-Discriminatory Access_Thomas Höppner_V2 1

1.4.1. Ares(2022)644288 BDZV-VDZ-Schreiben an Frau Präsidentin von der Leyen

[...]

1.4.3. Ares(2022)644288 22 01 20 DMA_Comments on Article 6-1-k_Fair and Non-Discriminatory Access.pdf

1.4.4. Ares(2022)644288 (Annex I_Why Taming Gatekeeper_s Intermediation

[...]

2.1.1. DAV-Position Paper No. 36 2021 with regard to the proposal for a Digital Markets Act COM(2020) 842

2.1.2. *Position paper of the German Bar Association with regard to the Proposal of the European Commission for an EU Digital Markets Act COM(2020) 842. - Ares(2021)3440262*

2.2.1 *Re_ Meeting request with SG.D1*

2.2.2. *Test link before common meeting at 10.00*

2.2.3. *Report of VC between Google and SG policy unit, 9 March 2022 - [Ares\(2022\)3114464](#)*

3.1.1. *Flash report_Fourth and final trilogue on the Digital Markets Act, Brussels 24 March 2022*

With regard to the documents identified, a complete disclosure is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other institutions or natural persons.

Article 9(1)(b) of the Data Protection Regulation (Regulation 2018/1725) 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 neither express any particular interest to have access to these personal data, nor put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Documents 1.2.3, 2.2.3. and 3.1.1. were drawn up for internal use under the responsibility of the relevant services of the European Commission. It solely reflects the author's interpretation of the interventions made and does not set out any official position of the third parties to which the documents refer, which were not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

Please note that document 1.3.2, 1.3.3., 1.3.5., 1.4.3., and 1.4.4. are studies carried out by external experts. They do not reflect the position of the Commission and cannot be quoted as such.

Please note that document 2.1.2. originating from a third party is 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 document without the agreement of the originator, who may hold an intellectual property right on it. The European Commission does not assume any responsibility from their reuse.

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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:

Yours faithfully,

Elisa Roller
Director

Enclosure: disclosed documents