



## EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels, 10<sup>th</sup> May 2019  
CONNECT/R4

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### **REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT**

**Subject: Your application for access to documents GestDem 2019/1317**

Dear Ms Kayali,

We refer to your application for access to documents submitted in accordance with Article 2(1) of Regulation 1049/2001 on public access to documents (hereinafter, 'Regulation 1049/2001'). Your application was received on 07/03/2019 and registered on 08/03/2019 under the above-mentioned reference number. We also refer to our email dated 28/03/2019 ([our reference Ares\(2019\)2214909](#)), 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**

You requested access to:

*“For the period between November 2014 and March 2019:*

- 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 CNECT (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.”*

This access to documents request was one of 25 requests you submitted on 07/03/2019 to 15 Directorates-General, Directors-General, Commissioners and members of their Cabinet. The majority of these requests cover the same period, have an almost identical wording and cover the same categories of documents relating to lobby meetings with a number of companies and any intermediaries representing their interests.

Given the involvement of so many services in the Commission and the wide scope of your requests, on 26/03/2019 the Secretariat-General of the European Commission (hereinafter, 'the SG') contacted you with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001 ([Ares\(2019\)2103981](#)).

The SG asked you to specify the objective of your request and your specific interest in the documents requested<sup>1</sup>, and whether you could significantly narrow down the scope of your request, so as to reduce it to a more manageable amount of documents. It informed you of the various steps required for the handling of your numerous simultaneous requests, which involve the simultaneous work of multiple Commission services and Cabinets. It further informed that the search and analysis of the documents, together with the need to possibly consult the third parties concerned cannot be expected to be completed within the normal time-limits set out in Regulation 1049/2001.

With a view to reaching a fair solution concerning the handling of your request, the SG provided you with a list of lobby meetings published in the Transparency register<sup>2</sup>, which took place since 01/12/2014 between the services concerned and the relevant companies or any intermediaries representing their interests. Moreover, it provided you with three alternative options for limiting the excessive administrative burden relating to the handling of your requests: (a) restriction of the temporary scope to a period of your choice not exceeding six months and limitation of the scope only to meetings published in the Transparency Register; (b) limitation of the scope to 8 requests of your choice; (c) limitation of the scope of your requests to 15 meetings of your choice published in the Transparency Register.

In your reply to our fair solution proposal, which was received on 03/04/2019, you did not specify the objective of your request and your specific interests in the documents requested. Moreover, you do not accept any of the several fair solution proposals put forward by the SG to render the disproportionate administrative burden more manageable. In addition, no alternative fair solution proposal was put forward. At the same time, you do not contest the administrative burden that the handling of your requests would entail.

For the reasons outlined above and given that we have to deliver what is possible within the time-limits outlined in Regulation 1049/2001 and given also the need to safeguard the interests of good administration, we see ourselves obliged to balance your possible interest in being granted access against the workload resulting from the processing of your application. This is in line with the case law of the EU Courts<sup>3</sup>.

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<sup>1</sup> Judgment of the Court of Justice of 2 October 2014, *Guido Strack v Commission*, C-127/13, EU:C:2014:2250, paragraph 28; Judgment of the Court of First Instance, of 22 May 2012, *EnBW Energie Baden-Württemberg v Commission*, T-344/08, EU:T:2012:242, paragraph 105.

<sup>2</sup> <http://ec.europa.eu/transparencyregister/public/homePage.do>

<sup>3</sup> Judgment of the Court of Justice of 2 October 2014 in case C-127/13, *Strack v Commission*, paragraphs 27-28.

In light of the above, we have proceeded to unilaterally restrict the scope of your application to the documents for which we considered that it can be dealt with within 30 working days counting from the date of registration of your application. Based on the information available we have not been able to identify any other conceivable way of dealing with your request.

Consequently, your application is understood to cover documents (briefings, minutes/reports, correspondence) relating to the meetings between the Commission and Amazon listed in the Transparency Register, between 01/01/2017 and the date of your request.

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

Within the statutory time limits foreseen by Regulation 1049/2001, DG Connect has been able to identify the following documents falling within the scope of your application:

### **Meeting with VP Ansip, Commission Gabriel and Members of their Cabinets (09/01/18):**

- **Document 1:** Briefing for VP Ansip – Meeting with online platforms’ CEOs;
- **Document 2:** Briefing for Commissioner Gabriel – Meeting with online platforms’ CEOs;
- **Annex 1 to Document 2:** List and description of invited online platforms;
- **Annex 2 to Document 2:** Background document sent to invited online platforms;
- **Annex 3 to Document 2:** Detailed agenda sent to invited online platforms;
- **Annex 4 to Document 2:** Details of participants representing online platforms;;
- **Document 3:** Notes of technical meeting;
- **Document 4:** Notes of the high-level meeting with platforms;
- **Document 5:** Notes of the roundtable;
- **Document 6:** Summary of discussions;
- **Document 7:** European Commission Statement of 08/01/18

### **Meeting with Eric Peters, Cabinet Member of Commission Gabriel (15/10/18):**

- **Document 8:** Meeting request of 28/09/18

### **Meeting with Director-General Roberto Viola (28/11/18):**

- **Document 9:** Steering Brief;
- **Document 10:** Back to Office report

### **Meeting with Director-General Roberto Viola (26/02/19):**

- **Document 11:** Meeting request of 08/02/19;;
- **Annex 1 to Document 11:** Biography of Amazon representative;
- **Annex 2 to Document 11:** Invitation for a meeting;
- **Document 12:** Exchange of emails concerning logistics of the meeting starting on 21/02/19;
- **Document 13:** Steering Brief;
- **Document 14:** Back to Office report.

### 3. ASSESSMENT UNDER REGULATION 1049/2001

Having examined these documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that **full access** can be given to **2 documents** whereas **partial access** can be granted to **11 documents**. Access must be **refused** for **7 documents** since an exception under Article 4 of the Regulation applies.

#### a. Full access

Please find enclosed a copy of document **Annex 2 to Document 2** and **Document 7**.

**Annex 2 to Document 2** is an internal, preparatory document for a meeting, which is part of a briefing. It does not reflect the position of the Commission and cannot be quoted as such.

Please note that **Document 7** is also publicly available via the following link: [http://europa.eu/rapid/press-release STATEMENT-18-63 en.htm](http://europa.eu/rapid/press-release_STATEMENT-18-63_en.htm)

You may reuse **Document 7** free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

#### b. Partial access - Protection of privacy and integrity of the individual

Pursuant to Article 4(1)(b) of Regulation 1049/2001, access to a document has to be refused if its disclosure would undermine *‘the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data’*.

Parts of **Documents 1, 2; Annexes 1 and 4 to Document 2; Documents 11, 12, 13** and **Annex 1 to Document 11** contain personal data (names, contact details and handwritten signatures) of European Commission staff or third parties.

The applicable EU 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 and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (‘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.<sup>4</sup>

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’.

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 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 request, 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, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, the above-mentioned parts of **Documents 1-2, 11, 12 and 14** have been blanked out.

**Documents 1 and 2** are internal, preparatory documents for meetings, which do not reflect the position of the European Commission and cannot be quoted as such.

**Documents 11 and 12** originate from third parties. Such documents 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.

**Document 14** was drawn up for internal use under the responsibility of the relevant services of DG CONNECT. It solely reflects the services’ interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which were not consulted on the content. It does not reflect the position of the European Commission and cannot be quoted as such.

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<sup>4</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

With respect to **Annexes 1 and 4 to Document 2** and **Annex 1 to Document 11**, following the redactions made for the personal data and parts which do not fall within the scope of your application in the case of Annexes 1 and 4 to Document 2, partial access to the remaining parts of these documents has been rendered meaningless. Therefore, access to these documents must be refused<sup>5</sup>.

**c. Partial access - Article 4(3) and Article 4(2) of Regulation 1049/2001**

*(i) Article 4(3) - Protection of the ongoing decision-making process*

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘access to a document, drawn up 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 to disclosure.’

One part of **Document 10** contains information in relation to comments made by Amazon concerning a matter for which negotiations are still underway. Disclosure of this information would prejudice the ongoing negotiations given that it would undermine the trust by the European Commission to hold free exchange of views with stakeholders concerning such negotiations. Stakeholder companies would not feel free to express their views and positions concerning these ongoing negotiations given the risk of public disclosure. The risk of harming the decision-making process by disclosing these parts of this document is therefore real and non-hypothetical.

The second subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘access 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.’

Some parts of **Annex 3 to Document 2**, **Documents 3-6, 9, 10** and **13** are covered by this exception. **Annex 3 to Document 2** is the agenda of the meeting organized under the “Chatham House” rules, meaning that neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed. This particular rule was agreed in order to allow a free exchange of views between the European Commission and the involved companies on a sensitive topic (illegal content). Disclosure of the specific parts of the documents would also enable the general public to identify the speakers and participants. This would harm the European Commission’s efforts to build constructive and open working relations with third parties (companies, industry etc), who would most probably refuse to participate in future meetings held under the “Chatham House” rules. The European Commission’s decision making process would be seriously undermined without the possibility to obtain the industry’s point of view.

**Documents 3-6** contain information about discussions between the Commission and the companies with regard to illegal content. The meeting to which these documents relate was held on 09/01/2018 under the “Chatham House” rules, meaning that neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed. This particular rule was agreed in order to allow a free exchange of views

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<sup>5</sup> See Judgment of the Court of first Instance of 12 July 2001 in case T-204/99, *Mattila v Council and Commission*, para. 69

between the Commission and the involved companies on a sensitive topic (illegal content).

Disclosing these passages would not only reveal the options under consideration by all actors and their opinions on these measures, it would also enable the general public to identify the authors of these statements. This would harm the Commission's efforts for building constructive and open working relationships with these companies, who would most probably refuse to participate in future meetings held under the "Chatham House" rule or, at least, refrain from expressing their point of view openly.

The Commission's decision-making process would be harmed without the possibility to obtain the industry's point of view. The companies would also be less likely to engage into a constructive dialogue with the Commission in order to agree on a self-regulatory approach.

**Documents 9, 10 and 13** are briefings and a back to office report prepared for or after the respective meetings. Parts of these documents contain preliminary views and reflections which were under consideration at the time when these documents were drafted. Disclosure of these parts of the documents would seriously undermine the European Commission's functioning and internal decision-making process and deter the services of the European Commission from putting forward their views without being unduly influenced by the prospect of the public exposure of such views.

Moreover, some parts of these same documents also contain views expressed by Amazon on different EU policies. Disclosure of this information would undermine the trust enjoyed by the European Commission to hold free exchange of views with stakeholders concerning the work it carries out. Moreover, the European Commission's decision-making process would be harmed without the possibility to obtain the industry's point of view. The companies would also be less likely to engage into a constructive dialogue with the European Commission due to the risk of their positions being exposed.

The risk of harming the future decision-making process by disclosing the aforementioned parts of these documents is therefore real and non-hypothetical.

(ii) *Article 4(2), first indent – Protection of commercial interests*

The first indent of Article 4(2) 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'.

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 **Documents 8-10, Annex 2 to Document 11 and Document 13** contain information concerning Amazon's views, concerns and positions in relation to various EU laws and policies, their business secrets and strategies. 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.

(iii) *Conclusion for documents covered by exceptions under Article 4(3) and 4(2) of Regulation 1049/2001*

The exceptions laid down under Article 4(3) and 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 these parts of the documents indicated above, but we have not been able to identify such an interest.

Considering the above, the corresponding passages of **Annex 3 to Document 2**, **Documents 8-10**, **Annex 2 to Document 11** and **Document 13** have been blanked out with a written indication outlining the corresponding exception. Certain parts of some of these documents also contain names, contact details, signatures and functions of Commission staff or external staff. These constitute personal data that have been expunged for the reasons set out under Section (b) above.

**Annex 3 to Document 2** is a document produced by the Commission. You may reuse this document free of charge for non-commercial and commercial purposes provided that the source is acknowledged, 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 re-use.

**Document 8** and **Annex 2 to Document 11** originate from third parties. Such documents 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 Commission and cannot be quoted as such.

**Documents 9 and 13** are internal, preparatory documents for meetings, which do not reflect the position of the Commission and cannot be quoted as such.

**Document 10** was drawn up for internal use under the responsibility of the relevant services of DG CONNECT. It solely reflects the services' interpretation of the interventions made and does not set out any official position of the third party to which the document refers, which was not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

With respect to **Documents 3-6**, following the redactions made covering the sensitive parts outlined above and also some personal data which was identified for some of these documents, partial access to the remaining parts of these documents was rendered meaningless. Therefore access to these documents must be refused<sup>6</sup>

#### 4. POSSIBILITY OF CONFIRMATORY APPLICATION

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<sup>6</sup> See Judgment of the Court of first Instance of 12 July 2001 in case T-204/99, *Mattila v Council and Commission*, para. 6



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

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 (SG.C.1)  
BERL 5/282  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

P.O. Claire Bury  
(e-Signed)  
Roberto Viola

Enclosures: 13