



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

The Director-General

Brussels,  
CONNECT/R4

Ms Rachel Knaebel  
Alter-médias  
5, avenue Paul Langevin  
93100, Montreuil  
France

*Advance copy via email:*  
[ask+request-9543-c0408fb8@asktheeu.org](mailto:ask+request-9543-c0408fb8@asktheeu.org)

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

**Subject: Your application for access to documents - RefGestDem 2021/3481**

Dear Ms Knaebel,

We refer to your email dated 23 May 2021 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 on 25 May 2021 under the abovementioned reference number. We also refer to our email, dated 15 June 2021, our reference Ares(2021)3896855, 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 APPLICATIONS**

Your request reads as follows:

*'' Dear DG CONNECT,*

*Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting all documentation (including but not limited to all email*

*correspondence, attendance lists, agendas, background papers, and minutes/notes) relating to the following meetings:*

*Werner Stengg, 03/03/2020, Brussels, American Chamber of Commerce to the European Union (AmCham EU), Digital policy*

*Alejandro Cainzos, Kim Jorgensen, Nele Eichhorn, 28/01/2020, Brussels, American Chamber of Commerce to the European Union (AmCham EU), EU digital agenda*

*Roberto Viola, 15/12/2020, Brussels, McKinsey Global Institute, Digital ecosystems (video-meeting)*

*Yours faithfully, [...]''.*

Due to the scope of your request, covering also areas falling under the responsibility of other Services, your request was split between:

- a) Secretariat – General (SG), under reference number GestDem 2021/3397,
- b) Directorate–General for Communications Networks, Content and Technology (DG CONNECT), under reference number GestDem 2021/3481

This reply relates only to the reference number GestDem 2021/3481 and the meeting between DG CONNECT's Director – General and Mc Kinsey Global Institute on 15 December 2020. You will receive a separate reply related to GestDem 2021/3397 and the other meetings indicated in your request from the other respective Service in due course.

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

The following documents have been identified as falling within the scope of your request:

- Email exchanges between Mc Kinsey and DG CONNECT dated 24 and 25 November 2020 (**Document 1**)
- Back To Office (BTO) Report –meeting between Roberto Viola and Mc Kinsey & Co, 15/12/2020, online (**Document 2**)
- Mc Kinsey's email dated 18 December 2020 (**Document 3**) and its attachment:
- Memorandum to DG CONNECT's Director- General (**Document 4**)

## **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 party we have arrived at the conclusion that partial access can be granted to two documents, whilst disclosure is refused for the two remaining documents, as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

## **A. Partial disclosure**

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

Full disclosure of Documents 1 and 2 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 and contact details of Commission staff members not pertaining to the senior management
- Names, functions and contact details of other 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.

### *(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.

Part of Document 1 originates from a third party and contains commercially sensitive and confidential information related to the concerned third party's activity, strategy, methodologies and approach.

---

<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.

Part of Document 2 is also covered by the abovementioned exception as it contains information which would allow conclusions and interpretations relating to the third party's activity.

Disclosure of these parts of the documents would seriously affect the third party's relations and position in the market and would undermine their commercial interests. Consequently, the abovementioned parts have been blanked out.

Please note that part of Document 1 has been also redacted because it is out of the scope of the request.

## **B. Non disclosure**

We regret to inform you that access to Documents 3 and 4 cannot be granted as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

Disclosure of these documents is prevented by the exception of Article 4(2) first indent of Regulation 1049/2001 with regard to the protection of commercial interests of a natural or legal person, including intellectual property. These documents originate from a third party and contain commercially sensitive and confidential details which would allow conclusions relating to the third party's positions, views, strategy and approach. The commercial interests of the concerned third party would be adversely affected should the above-mentioned documents be publicly available.

Moreover, parts of these documents contain personal data, in particular the names and contact details of Commission staff members not pertaining to the senior management and the names, functions and contact details of natural persons, thus their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section A (i).

We have considered whether partial access could be granted to these documents. However, partial access is not possible considering that the documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

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

The exception laid down in Article 4(2) of Regulation 1049/2001 applies, 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 parts of the documents which are being withheld but we have not been able to identify such an interest.

## **5. REUSE OF DOCUMENTS**

Document 2 was drawn up for internal use under the responsibility of the relevant service of DG CONNECT. It solely reflects the service's 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 their content. It does not reflect the position of the Commission and cannot be quoted as such.

You may reuse public documents which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of the Commission documents](#). You may reuse the disclosed documents 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.

## **6. 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.

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

Enclosures: (2)

