



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

The Director- General

Brussels, 15th July 2022
CNECT.R.4

Ms Nienke Palstra
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Via email:

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**Subject: Your application for access to documents - GestDem 2022/3022,
2022/3025, 2022/3027, 2022/3028**

Dear Ms Palstra,

We refer to your emails of 24 May 2022 wherein you make four 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’), which were registered on 25 May 2022 under the abovementioned reference numbers. We also refer to our email, dated 20 June 2022 (our reference Ares(2022)4530067) whereby we informed you that the time limit for handling your applications was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATIONS

Your requests read as follow:

GestDem 2022/3022

“.... All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2022-05-19 between Thierry Breton and Meta Platforms Ireland Limited and its various subsidiaries (f/k/a Facebook Ireland Limited).”

GestDem 2022/3025

“....All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2022-03-30 between Thierry Breton and Google.”

GestDem 2022/3027

“....All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2022-03-10 between Filomena Chirico and Apple Inc.”

GestDem 2022/3028

“...All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2022-03-15 between Filomena Chirico and Valere Moutarlier and Microsoft Corporation.”

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

2.1. GestDem 2022/3022

- Email, Meeting request, CAB Breton, 13-04-2022, ARES(2022)3010219 (**Document 1**)
- Readout, Readout - Meeting with Meta - 19 May 2022, CAB Breton, 20-05-2022, ARES(2022)3856997 (**Document 2**)
- Briefing note, DG CNECT (**Document 3**)

2.2. GestDem 2022/3025

- Email, Meeting request with Google and Commissioner Breton, 24-02-2022 (**Document 4**)
- Readout following meeting between Commissioner Breton and Alphabet/Google- 30/03/2022, 05-04-2022, ARES(2022)2573676 (**Document 5**)

- Briefing note, DG CNECT, ARES(2022)3023151 (**Document 6**)

2.3. GestDem 2022/3027

- Email, Further input on virtual assistants, 14-03-2022, ARES(2022)1873385 (**Document 7**)
- Email, DMA-Apple meeting request, 15-02-2022, ARES(2022)1835529 (**Document 8**)
- BTO, Meeting CAB's Apple on EP amendments re Vas, Arts 6(1)(c) and f- 10 March 2022, ARES(2022)4240373 (**Document 9**)

2.4. GestDem 2022/3028

- Email exchanges, Virtual meeting request for the kind attention of Mr. Valère Moutarlier, 24.11.2021, ARES(2021)7243676, (**Document 10**)
- Briefing note, DG CNECT, ARES(2022)2328430 (**Document 11**)
- Email, meeting with Microsoft, ARES(2022)4267900 (**Document 12**)

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 partial access can be granted to the documents identified. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 1 - 12 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:

- the names and contact information of Commission staff members not pertaining to the senior management;
- the names and functions of other natural persons.

Article 9(1)(b) of the Data Protection Regulation¹ 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, we conclude that, pursuant to Article 4(1)(b) of the Regulation 1049/2001, access cannot be granted to the personal data contained in the identified documents, as the need to obtain access thereto for a purpose in the public interest has not been

¹ 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.

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 international relations

Article 4(1)(a), third indent of Regulation 1049/2001 stipulates that access to a document shall be refused ‘(...) where disclosure would undermine the protection of the public interests as regards international relations’.

According to settled case-law, ‘the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, [...] calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation’². In this context, the Court of Justice has acknowledged that the institutions enjoy ‘a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest’³.

Parts of Document 3 contain sensitive information concerning the state of disinformation in Ukraine and the possible impact on third countries. There is a concrete risk that the public disclosure of the abovementioned parts of Document 3 would affect the EU’s international relations with third countries.

Consequently, the above-mentioned parts of Document 3 have been blanked out.

(iii) Protection of commercial interests

The first indent of Article 4(2) of the 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 Documents 3, 6, 9, 10 and 11 contain business information of third parties. We consider that these parts constitute sensitive business information, views and positions of the organizations concerned, which relate to business strategies, the competitive situation on the market and other commercial interests of companies, including intellectual property. There is a real and non-hypothetical risk that disclosure of these parts of Documents 3, 6, 9, 10 and 11 could undermine and seriously affect the commercial interests of the companies at question. Therefore, access to these parts of Document 3, 6, 9, 10 and 11 cannot be granted as the disclosure is prevented by the exception to the right of access referred to above.

Consequently, the above-mentioned parts have been blanked out.

(iv) Protection of the decision-making process

² Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35

³ Judgment in *Council v Sophie in’t Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63

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.'*

Documents 3, 6 and 11 contain preliminary opinions and reflections of the Commission services on the Digital Services Act package. The Digital Services Act package is subject to ongoing legislative decision-making processes, as the Council has not yet adopted the final texts of the Digital Markets Act and the Digital Services Act. In addition, Document 6 also contains opinions and reflections of the Commission services on the Data Act proposal for a Regulation on harmonised rules on fair access to and use of data and on the EU cloud security certification scheme, which are also subject to ongoing legislative decision-making processes.

The risk of disclosing information concerning preliminary opinions of the Commission services before the adoption of the legislative acts in question would deter the Commission from freely expressing their views and conducting frank and internal discussions. Speculations and misinterpretations of the public on the views and reflections put forward in these ongoing decision-making processes would affect the exploration of different policy options and unduly restrict the Commission's internal space to think, exposing the Commission and the co-legislators to external pressure during the ongoing legislative decision-making processes. The risk of disclosure of such preliminary opinions and reflections would therefore seriously undermine the ongoing decision-making processes. That risk is also reasonably foreseeable and not purely hypothetical.

In light of the foregoing considerations, we consider that pursuant to Article 4(3) first subparagraph of the Regulation 1049/2001, access cannot be granted to the abovementioned parts.

Consequently, the above-mentioned parts have been blanked out.

4. OVERRIDING 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 which are being withheld but we have not been able to identify such an interest.

5. REUSE OF DOCUMENTS

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 Documents 2, 3, 5, 6, 9, 10, 11 and 12 and the parts of Documents 4, 10 and 14 originating from the 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, 4, 7, 8 and 10 originating from a third party is disclosed to you based on Regulation 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.

We would also like to stress that Documents 2, 3, 5, 6, 9, 11 and 12 were drawn up for internal use under the responsibility of the relevant service of DG CONNECT. They solely reflect the service's interpretation of the interventions made and do not set out any official position of the third parties to which the abovementioned documents refer, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

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

Yours sincerely,

Electronically signed

Roberto Viola

Enclosures: (12)