



EUROPEAN COMMISSION

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Corporate Europe Observatory
Rue d'Edimbourg 26
1050 Brussels
Belgium

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2019/1363**

Dear ██████████,

I refer to your email of 13 June 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 documents² (hereafter 'Regulation (EC) No 1049/2001').

Please accept our apologies for this late reply which is due to the many inter-service and third-party consultations' which took place in relation to your request.

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 '[...] documents since November 2014 which contain the following information:

- a list of lobby meetings held by this DG with Google or its intermediaries. The list should include: date, individuals attending + organisational affiliation, the issues discussed;
- minutes and other reports of these meetings;

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

- all correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between this DG (including the Commissioner and the Cabinet) and Google or any intermediaries representing its interests.
- All documents prepared for the purpose of the meeting and/or exchanged during the course of the meeting’.

Since 46 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, Corporate Europe Observatory, 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 Instance³ which confirmed in its *Ryanair* judgment⁴ 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 request 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 requested⁶, and whether you could narrow down the scope of your request, so as to reduce it to a more manageable number.

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.

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:

- 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 do not consider the proposal to be fair. First of all, you stated that ‘[your] decision to file a series of 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. This could mean that some of the DGs [you] sent a request to might have held numerous encounters with the stakeholders [you are] interested in, and some might have never encountered them [and that] 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.’

Second of all, 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 regarding unilateral restrictions. 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.’

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

You further explained that ‘[...] as a result of the Commission’s conviction that [your] requests and other requests are “coordinated”, the Commission has taken into account in its calculations documents that do not fall under the scope of [your] request’ You explained that if you ‘[...] filed requests regarding Google solely it is because [you are] interested in the interactions between EU institutions and this stakeholder. If [you] didn’t include other stakeholders, such as Amazon or Microsoft it is because [you are] not interested in documents related to these other stakeholders’.

Moreover, you referred to previous requests, 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’.

With regard to the Commission’s request that you should specify the objective of your requests, you explained that ‘[...] the content and the wording of [your] initial requests are self-explanatory: [you are] interested in knowing about the interactions between Commission branches and Google, for the sake of knowing about the interactions between Commission branches and Google, as [you] believe this matter is in the public interest. You also pointed out that the solutions proposed by the Commission to limit the scope of the request based on the meetings that have already been published in the meetings lists of Commissioners, their cabinets and Directors, ‘[...] would considerably limit the scope of [your] request, given that as it is public knowledge - many stakeholder interactions take place with middle and low-level Commission officials who are not covered by proactive transparency’.

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 Google, 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’.

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 amounted to 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.

The scope of your request relating solely to Google included, at least, 80 documents amounting to approximately 480 pages, the search of which involved the entire Directorate-General and three Commissioners' cabinets.

Furthermore, at the time of your request, the Directorate-General for Communication Networks, Content and Technology was already processing other requests from your organisation.

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:

- 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 (EC) No 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 (briefings, minutes/reports, correspondence) relating to the meetings between the Commission and Google listed in the Transparency Register, as outlined in the fair solution proposal, between 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 categories of documents as falling under the scope of your request:

- Meeting with Director General (Roberto Viola) (20/11/2018)
 - BTO meeting between Roberto Viola and Google on 20 November 2018 (hereafter document No 1)
- Meeting with Eric Peters, Member of Cabinet Gabriel (25/10/2018)
 - - Meeting request (hereafter document No 2)
- Meeting with Director General (Roberto Viola) (27/4/2018)
 - Steering Brief (hereafter document No 3)
 - BTO Roberto Viola meeting with Google 27/4/2017 (hereafter document No 4)
- Meeting with Eric Peters, Member of Cabinet Gabriel (27/04/2018)
 - Meeting request (hereafter document No 5) ;
 - BTO meeting with Google (hereafter document No 6) ;
 - Google presentation ‘Creating a better and safer internet for all’ (hereafter document No 7);
 - Email ‘SaferInternet4Equ campaign’ (hereafter document No 8)
- Meeting with VP Ansip and Members of his Cabinet (17/04/2018)
 - Note to the file - Report from the mission of Vice-President Andrus Ansip to Silicon Valley and San Francisco on April 17-18, 2018 (Document No 9) and attached agenda (hereafter document No 10)
 - Briefing VP Ansip participation in RSA Conference and bilateral meetings in Silicon Valley, San Francisco 16- 18/4/2018) (hereafter document No 11)
- Meeting with Manuel Mateo Goyet, Member of Cabinet Gabriel (15/3/2018)
 - -BTO- Meeting with Google (hereafter document No 12)
- Meeting with Commissioner Gabriel (20/2/2018)
 - Briefing (hereafter document No 13)
 - BTO (hereafter document No 14)
- Meeting with VP Ansip, Commissioner Gabriel and Members of their Cabinets (9/1/2018)

- Briefing for VP Ansip - Meeting with online platforms' CEOs – Follow-up to the Communication on Tackling Illegal Content Online (hereafter document No 15)
- Briefing for Commissioner Gabriel –Meeting with online platforms' CEOs – Follow-up to the Communication on Tackling Illegal Content Online (hereafter document No 16)
- Annex I: List and description of invited online platforms (hereafter document No 17)
- Annex II: Background document sent to invited online platforms (hereafter document No 18)
- Annex III: Detailed agenda sent to invited online platforms (hereafter document No 19)
- Annex IV: CVs of participants representing online platforms (hereafter document No 20)
- Notes of technical meeting (hereafter document No 21)
- Notes of the high-level meeting with platforms of 9 January 2018 (hereafter document No 22)
- Notes of the roundtable (hereafter document No 23)
- Summary of discussions (hereafter document No 24)
- European Commission Statement, 8/1/2018 (hereafter document No 25)
- Meeting with Manuel Mateo Goyet, Member of Cabinet Gabriel, Hanna Hinrikus and Laure Chapuis-Kombos, Members of Cabinet Ansip (5/10/2017)
 - Meeting request (hereafter document No 26)
- Meeting with Director General (Roberto Viola) (27/3/2017)
 - BTO Meeting with Google (hereafter document No 27)
- Meeting with VP Ansip and Stig Joergen Gren, Member of Cabinet Ansip (27/3/2017)
 - Briefing (hereafter document No 28)
 - Meeting conclusions (hereafter document No 29).

In its initial reply of 22 May 2019, the Directorate-General for Communication Networks, Content and Technology granted full access to documents No 18 and 25 and wide partial access, subject 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 to documents No 2, 4, 5, 8, 10, 14, 15, 16, 26, 29.

It provided partial access based on the exception of Article 4(2) first indent of Regulation (EC) No 1049/2001 (protection of the commercial interests) to documents 1, 3, 6, 9, 12 and 28 and based on the exception of Article 4(3) second paragraph of Regulation (EC) No 1049/2001 (protection of the decision-making process) to documents No 3, 13, 19 and 27.

Finally the Directorate-General for Communications Networks, Content and Technology fully refused access to documents 7 and 17 based on the exception of Article 4(2) first indent of Regulation (EC) No 1049/2001 (protection of the commercial interests) and to documents 11, 21, 22, 23 and 24 based on the exception of Article 4(3) second paragraph of Regulation (EC) No 1049/2001 (protection of the decision-making process). Finally the Directorate-General for Communications Networks, Content and Technology fully refused access to document 20 based on the exception of Article 4(1) (b) (protection of privacy and integrity of the individual) 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(2) first indent (protection of the commercial interests) and Article 4(3) second paragraph of Regulation (EC) No 1049/2001 (protection of the decision-making process) of Regulation (EC) No 1049/2001.

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(2) first indent (protection of the commercial interests) and Article 4(3) second paragraph (protection of the decision-making process) 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, the European Commission has carried out a review of the initial position of the Directorate-General for Communications Networks, Content and Technology.

In accordance to Article 5(4) of the detailed rules for the application of Regulation (EC) No 1049/2001, Google was duly consulted on disclosure of the parts of the documents which pertain to its commercial interests.

Following this consultation and the assessment performed by the Secretariat-General, I would like to inform you that full access is now granted to documents 19 and 24 and wider partial access is now granted to documents 1, 3, 6, 7, 9, 11, 12, 13, 17, 21, 22 and 23 . Access to the withheld parts of the documents has to be refused based on exceptions provided for in Article 4(1)(b) (protection of personal data) and Article 4(2) first indent (protection of the commercial interests) of Regulation (EC) No 1049/2001.

Finally, I regret to inform you that I confirm the initial decision of Directorate-General for Communications Networks, Content and Technology to fully refuse access to document 20 based on the exception of Article 4(1)(b) (protection of personal data) and to partially refuse access to documents 27 and 28, based on the exceptions of Article 4(1)(b) (protection of personal data), Article 4(2) first indent (protection of commercial interests) and Article 4(3) (protection of the decision-making process) of Regulation (EC) No 1049/2001.

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.

In your confirmatory application, you underline the fact that the workload would be divided among the Directorates-General concerned and justify herewith why you have filed separate requests. 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 41 documents as falling within the scope, and granted wide partial access to 6 documents. In fact, Corporate Europe Observatory has submitted 80 requests for access to documents this year alone.

Indeed, the European Commission handled simultaneously 46 requests from the Corporate Europe Observatory and 45 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. Your interest in ‘knowing about the interactions between Commission branches and Google, for the sake of knowing about the interactions between Commission branches and Google, as [you] believe this matter is in the public interest’, 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.⁸

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 188 initial and confirmatory requests only reinforces this conclusion.

In this particular case concerning interactions with Google, the original scope of your initial application, covered at least 80 documents, amounting to approximately 480 pages. 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 more than 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.

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*⁹ 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

⁸ 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.

⁹ *Guido Strack v Commission*, cited above, paragraphs 26-28.

the interests of good administration'. This practice was also recognised by the Court in its judgment in *EnBW Energie Baden-Württemberg v Commission*.¹⁰

You further argue that, notwithstanding the fact that you were not obliged to provide any reasons for your request, you did provide a justification in saying that, I quote: 'I am interested in knowing about the interactions between Commission branches and Google, for the sake of knowing about the interactions between Commission branches and Google, as I believe this matter is in the public interest. I can expand it further by saying that Google is a massive lobby actor which seeks to influence EU policy, declaring to spend over 6 million euros yearly, a number that has grown substantially in the past years and is likely to continue increasing. The US based firm seeks to influence a wide range of EU policies which affects the daily life of citizens, from taxation to data protection, and so many more. To make matter worse, the lobbying done by Google and its intermediaries has been in the middle of many controversial accounts and clarity is needed. It is thus of public interest to scrutinise Google's interactions with EU policy-makers and civil service as they might have an impact to the daily lives of citizens. All of this was self-evident from the way my request was formulated and my answer to the Secretary General and further, it is unnecessary for my right to information to be implemented'.

However, this statement is rather of a general nature and does not establish a specific interest in obtaining the information required.

As to the limitation of the scope of the request to intermediaries, namely 'law firms and/or consultants directly representing Google 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 other simultaneous applications 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 full or partial access to 21 documents in the framework of this request, which is already a substantial amount of documents, considering the time required for the individual assessment of each document.

¹⁰ 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.

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.

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 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.¹¹

Based on the 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. Assessment of the documents under Regulation (EC) No 1049/2001

a) Full access

Please find enclosed a copy of documents 19 and 24. Document 19 is the draft agenda for the meetings with online platforms of 9 January 2018. Document 24 is the back to the office report of the meeting of 9 January 2018, which summarizes the topics which were discussed.

You may reuse the documents 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.

b) Partial access - protection of personal data

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘access to a document is refused where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data’.

¹¹ Judgment in *Guido Strack v Commission*, cited above, paragraph 26.

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹², the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹³ (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

Please note that Regulation (EC) No 45/2001, as from 11 December 2018, was repealed by 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/EC¹⁴ (hereafter ‘Regulation 2018/1725’).

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation 2018/1725.

In the above-mentioned judgment, the Court of Justice stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’¹⁵.

Article 3(1) of Regulation (EC) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.¹⁶

The remaining documents to which you request access, except for documents 7, 17 and 23, all include personal data of natural persons, such as the names of the representatives of platforms who participated in the meetings. They also contain the personal data of European Commission’s staff not holding any senior management positions. Document 20 to which access is fully refused, consists exclusively of the names and CV of platforms’ representatives who took part in meetings.

¹² Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, 378 (hereinafter ‘judgment in C-28/08 P’), C-28/08 P, EU:C:2010, paragraph 59.

¹³ Official Journal L 8 of 12.1.2001, page 1.

¹⁴ Official Journal L 205 of 21.11.2018, p. 39.

¹⁵ Judgment in C-28/08 P, cited above, paragraph 59.

¹⁶ Judgment of the Court of Justice of 20 May 2003, preliminary rulings in proceedings between *Rechnungshof and Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

I consider that the disclosure of the names, surnames, contact details and professional activities of the persons involved is deemed to undermine the protection of privacy and the integrity of the individuals concerned, according to Article 3(1) of Regulation (EU) 2018/1725.

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’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine of its own motion the existence of a need for transferring personal data.¹⁷ This is also clear from Article 9(1)(b) of Regulation 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the 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, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the 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.

¹⁷ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

c) Partial access - protection of the commercial interests

Article 4(2), first indent of Regulation (EC) No 1049/2001 stipulates 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'.

In your confirmatory application, you argue that while '[you] can understand that some of this information is covered by the exception, [you] have a question though regarding whether any of the blacked out information covers Google's positions towards EU policy as [you] believe that this is not commercially sensitive information [...]'].

Please note that Google has been duly consulted on disclosure of the documents which contained allegedly commercially sensitive information. Following this consultation, Google agreed to further disclose parts of the documents that had been previously blanked out on the basis of Article 4(2), first indent of Regulation (EC) No 1049/2001. In particular, Google agreed to disclose more parts of documents 1, 3, 6, 7, 9, 11, 12, 21, 22 and 23.

Nonetheless, the remaining parts of documents 1, 3, 7, 12, 22, 23 and 28 have to be withheld in application of Article 4(2), first indent of Regulation (EC) No 1049/2001, as this information is commercially and market sensitive. The withheld information contains data specific for Google's business affairs, its relations with third companies and internal information regarding working and staff matters.

Therefore, this information does not relate to Google's positions towards EU policy.

The disclosure of these parts, would seriously undermine the commercial interests of Google, as it would negatively affect its commercial activity, in particular in the competitive context. It would provide competitors with an unfair advantage as it would give them access to sensitive information internal to the company.

The General Court has specifically confirmed on several occasions, that giving access to information particular to an undertaking which reveals its expertise, is capable of undermining the commercial interests of this undertaking.¹⁸

In this context, I would like to point out that documents that are disclosed under Regulation (EC) No 1049/2001 become, legally speaking, public documents. Indeed, a document released following an application for access to documents would have to be provided to any other applicant that would ask for it.

¹⁸ See Judgment of the General Court of 11 July 2018, *Rogesa v Commission*, T-643/13, EU:T:2018:423, paragraph 70 and Judgment of the General Court of 25 September 2018, *Amicus Therapeutics v European Medicines Agency EMA*, T-33/17, EU:T:2018:595, paragraph 75.

Consequently, there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the commercial interests of Google. I conclude, therefore, that access to the withheld parts of the requested documents must be denied on the basis of the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

d) Partial access - Protection of the 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.’

The withheld parts of document 27 which is a back to the office report of the meeting between Google and Roberto Viola of 27 March 2017, contain information about discussions between the European Commission and Google with regard to hate speech and illegal content. Disclosing these passages would reveal options under consideration and the opinions of all actors involved on these measures. Part of this document contains preliminary views and reflections, which were under consideration at that time. Disclosure of this part of the document would seriously undermine the European Commission’s functioning and internal decision-making process and deter its services and officials from putting forward their views, without being unduly influenced by the prospect of wide disclosure.

Document 11 consists of briefings as regards the meetings held between Vice-President Andrus Ansip and different platforms. The withheld part of document 11 contains sensitive information on positions of the European Commission which is not public knowledge and the disclosure of which would expose the European Commission to external pressure.

Therefore, given the need to protect the decision-making process of the European Commission and its margin of manoeuvre for exploring all possible policy options free from external pressure, in combination with the highly sensitive nature of the debate, I consider that there is a real and foreseeable risk that the decision-making process would be undermined by the disclosure of the redacted parts of the documents.

3. PARTIAL ACCESS

Please note that partial access is granted to the remaining documents, except to document 20, to which access is refused entirely.

4. OVERRIDING PUBLIC INTEREST

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.¹⁹ Please also note that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

In your confirmatory application, you do not put forward any specific arguments to establish the existence of an overriding public interest. You mention that '[...] Google is a massive lobby actor which seeks to influence EU policy, declaring to spend more 6 million euros yearly [...]. The US based firm seeks to influence a wide range of EU policies which affects the daily life of citizens, from taxation to data protection, and so many more.' You also mention that '[...] one of the essential pillars on the basis of which the EU was founded is a participatory democracy'.

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

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,



For the Commission

[Redacted signature area]

¹⁹ 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.