



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

The Director-General

Brussels,
CONNECT/R4

Ms Margarita da Silva
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Rue d'Edimbourg 26
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Advance copy via email:
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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents - RefGestDem 2021/6947

Dear Ms da Silva,

We refer to your e-mail from 15 November 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 the same date under the abovementioned reference number. We also refer to our email, dated 6 December 2021, our reference Ares(2021)7511201, 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

Your request reads as follows:

''Dear Communications Networks, Content and Technology,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting all documents (including but not limited to correspondence, briefs, notes, recordings, presentations, etc) related to the online roundtable to discuss the Digital Markets Act and the Digital Services Act held by the Irish Minister of State with responsibility for Trade Promotion, Digital and Company Regulation on the 21st of September.

According to press reports, a DG CNECT official attended the meeting[...]

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We identified the following document as falling within the scope of your request:

-Email exchanges between the Permanent Representation of Ireland to the European Union and DG CONNECT from 26 July until 13 September 2001 concerning the Irish DSA/DMA event (**Document 1**)

- Email exchanges of 17 September 2021 between the Department of Enterprise, Trade and Employment and DG CONNECT concerning the Roundtable Discussion on EU Digital Package on 21st September (**Document 2**)

- Meeting Agenda of the Roundtable Stakeholder Discussion on EU Digital Package (**Document 3**)

- Back to Office (BTO) report of the IE event on DSA/DMA (**Document 4**)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that partial access can be granted to three documents whilst disclosure is refused for one document. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Partial disclosure - Protection of privacy and integrity of individuals

Full disclosure of Documents 1-3 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, initials, functions, CV and contact details of Commission staff members not pertaining to the senior management;

-the names, functions, CV and contact details 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

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.

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.

B. Non disclosure

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

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 the 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.’

Document 4 contains sensitive information with regard to the ongoing procedure relating to the Digital Services Act and Digital Markets Act. It also contains considerations and views of the participants. This content is subject to ongoing discussions. Disclosure of this information would lead to speculations and misinterpretations of the public on the views and considerations put forward in an early stage of the decision-making process and would seriously undermine the ongoing decision-making process. This risk is reasonably foreseeable and not purely hypothetical.

Furthermore, parts of this document contain personal data, in particular the names, and initials of Commission staff members not pertaining to the senior management and names of other 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 3.A.

We have considered whether partial access could be granted to this document. However, partial access is not possible considering that this document is covered in its 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(3) 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 these parts of the document 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 the parts of Documents 1 and 2 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.

Document 3 and parts of Documents 1 and 2 originate from third parties. Please note that they are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their 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

Yours sincerely,

Electronically signed

Roberto Viola

Enclosures: (3)