



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

The Director-General

Brussels
CNECT.R.4

Mr Schindler
c/o Büro Domscheit-Berg, MdB
Platz der Republik 1
11011 Berlin
Deutschland

Advance copy via email:
[ask+request-10900-
b6e7e548@asktheeu.org](mailto:ask+request-10900-b6e7e548@asktheeu.org)

Registered letter with acknowledgement of receipt

Subject: Your request for access to documents - GestDem 2022/1756

Dear Mr Schindler,

We refer to your email of 25 March 2022 in which 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 day under the above-mentioned reference number. We also make reference to our holding reply, dated 20 April 2022, our reference Ares(2022)3100143, 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

By your application, you request access to the following:

‘Dear CNECT,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

All information in the context of the Digital Markets Act (DMA) concerning

** remuneration for digital content OR*

** the role of publishers OR*

** rules on fairness for the provision of services OR*

** the inclusion of search engines in the context of the DMA (in particular in the context of article 6) OR*

** FRAND provisions OR*

** the relationship of the DMA with the Copyright in the Digital Single Market Directive OR*

** any communication with publishers or their representatives, associations or people acting on their behalf in the context of the DMA*

For the avoidance of doubt, the term "information" and "documents" should be understood as broadly as possible and it should definitely include such information and documents that the Commission considers "short-lived" or "unimportant", including letters, correspondence, memos, drafts, meeting notes, records regardless of medium, language or format.

If you hold information in an electronic format, I am asking for an electronic copy of such information in its original data format.

The scope of this request includes but is not limited to any proposals, such as drafting suggestions or table documents for Art 6.1.kb and the relevant recitals in preparation for or during the Digital Markets Act trilogue of 24 March 2022. I want third party communication to be included in the scope of this request.

I am happy to grant you a reasonable amount of time for the required third party consultations regarding the release of content in possession of the Commission provided by third parties, such as lobbyists, outside legal counsel and member states. If permitted by applicable law, I am looking also for the names and affiliations of people who have submitted such information and I am asking for only the minimum amount of redaction of such names if required by law.

And really, really, since this has been an issue in the past: If a Commissioner, Cabinet or staff member of a DG unit is sending a comment, email, text message, draft or any other piece of data to another Commissioner or staff member in its own or a different DG falling under the scope of this request, I want a copy of this document. If you - for whatever reason - do not consider it relevant to be included in the EU eDomec or ARES system, it does not lose its property as a document under Regulation 1049/2001.

If you end up considering to invoke exceptions such as those concerning ongoing legislative work, I am willing to accept partial delivery of documents and kindly ask you to indicate the time at which other documents would no longer be covered by such an exception to allow for a speedy re-filing of this request.'

Please note that this reply refers to documents identified in relation to your access to documents request GESTDEM 2022/1756 submitted to the Directorate-General for Communications Networks, Content and Technology (DG CONNECT). Documents held by other Directorates-General (DGs) are covered by those DGs in reply to their respective requests for access to documents.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Email of EBU of 4 February 2022 - DMA - European media position for trilogues **(Document 1)**
 - o Attachment: DMA - EU Media organisations position for trilogues **(Document 2)**
- Email of EIBF of 24 February 2022 - European book sector on DMA - remaining concerns **(Document 3)**
 - o Attachment: EIBF_FEP_BOEV_DMA paper_VF.pdf **(Document 4)**
- Email of 23 June 2021 - DMA: EIBF/FEP suggested amendments 94150 **(Document 5)**
- Email of EPC Europe of 18 March 2022 - follow up on DMA and DSA **(Document 6)**
 - o Attachment: European media sector calls for further improvements of the DMA for a forward-looking media sector **(Document 7)**
 - o Attachment: ANNEX II **(Document 8)**
- Email EMMA & ENPA of 27 January 2022 - DMA **(Document 9)**
 - o Attachment: ANNEX I **(Document 10)**
 - o Attachment: ANNEX II **(Document 11)**
- Email of 30 September 2021 - EMMA & ENPA **(Document 12)**
 - o Attachment: ANNEX I **(Document 13)**
 - o Attachment: ANNEX II **(Document 14)**
- Commission reply to Email of 30 September 2021- EMMA & ENPA on the DMA **(Document 15)**
- Email EMMA & ENPA of 8 March 2022 - Digital Markets Act (DMA) **(Document 16)**
 - o Attachment: ANNEX I **(Document 17)**
- Commission reply to Email of 8 March 2022 - Digital Markets Act (DMA) **(Document 18)**

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 opinions of the third parties we have arrived at the conclusion that partial access can be granted to seven documents and access must be refused to the remaining documents. Full and partial disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001. Please also note that parts of Documents 5 and 6 have been redacted as being outside the scope of the request.

A. Partial disclosure

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 1 - 7 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 and contact information of Commission staff members not pertaining to the senior management;
- Names, functions and contact information 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, I conclude that, pursuant to Article 4(1)(b) Regulation 1049/2001, access cannot be granted to the personal data contained in the requested document, 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.

A part of Document 6 contains sensitive business information relating 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 this part of the document could undermine and seriously affect the commercial interests of these companies.

Consequently, the above-mentioned part of Document 6 has been blanked out.

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.

B. Non-disclosure

We regret to inform you that access cannot be granted to Documents 8 - 18 as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001. Please also note that parts of Document 9 fall outside the scope of the request.

(i) Protection of commercial interests

Documents 8 - 18 are covered by the exception of Article 4(2) first indent of Regulation 1049/2001 which 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.

Documents 8 – 14, 16 and 17 originate from a third party and refer to the activities and business information of third parties. Within the statutory time limit, we could not obtain the views of the originator of these documents about a potential disclosure. After assessment, we have arrived at the conclusion that a disclosure of these documents could adversely affect the commercial interests of the concerned third party.

Documents 15 and 18 contain sensitive business information relating 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 documents could undermine and seriously affect the commercial interests of these companies.

(ii) Protection of privacy and integrity of individuals

Moreover, parts of Documents 9 - 18 contain personal data, in particular the names and initials of Commission staff members not pertaining to the senior management and the names and functions 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.(i) above.

We have considered whether partial access could be granted to Documents 8 - 18. However, partial access is not possible considering that these documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

In light of the foregoing considerations, access to Documents 8 - 18 must be refused completely.

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

Documents 1 – 7 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 (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: (7)