



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate D - Twin Transition, Economic & Social Affairs
SG.D.1 - Digital Transition, Industry & Single Market

Brussels
SG.D.1/BA

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UK

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Dear Sir,

Subject: Your application for access to documents – GESTDEM 2022/2958, 2961, 2962

We refer to your e-mails of 23 May 2022 in which you make three requests for access to documents, registered on 23 May 2022 under the above-mentioned reference numbers.

You request access to:

All documentation, including but not limited to attendance lists, agendas, background papers, minutes/notes, video recordings and email correspondence about or summarising, the following meetings:

1. *Google and President Ursula von der Leyen on 30th March 2022 [GESTDEM 2022/2958]*
2. *Microsoft Corporation and Executive VP Margrethe Vestager on Digital policies on 18/05/2022 [GESTDEM 2022/2961]*
3. *Google and Executive VP Margrethe Vestager on Digital markets Act and Digital Services Act, Data Act on 30/03/2022 [GESTDEM 2022/2961]*
4. *Microsoft Corporation and Executive VP Margrethe Vestager on Digital policies on 17/03/2022 [GESTDEM 2022/2961]*
5. *Microsoft Corporation and Penelope Papandropoulos and Werner Stengg, on 18/05/2022, on Digital policies [GESTDEM 2022/2962]*

We have identified the following documents responsive to your request:

1. *Ares(2022)3979173 - Briefing Microsoft Trade and technology council*
2. *Ares(2022)3557024 - Incoming meeting request Microsoft 18 May_Redacted*
3. *Ares(2022)3768777 - positive reply Microsoft 18 May_Redacted*
4. *Ares(2022)3979173 - Briefing Microsoft AI_Redacted*
5. *Ares(2022)3979173 - Briefing Microsoft Cloud_Redacted*
6. *Ares(2022)3979173 - Briefing Microsoft Cybersecurity_Redacted*
7. *Ares(2022)3979173 - Briefing Microsoft Digital Services Act_Redacted*

8. *Ares(2022)3979173 - Briefing Microsoft Legislation on child sexual abuse_Redacted*
9. *Ares(2022)3979173 - Briefing Microsoft RRF_Redacted*
10. *Ares(2022)3979173 - Briefing Microsoft Steering brief_Redacted*
11. *Ares(2022)3979173 - Briefing Microsoft Table of contents_Redacted*
12. *Ares(2022)4212038_Minutes from mtg Microsoft - CAB Vestager - 180522_Redacted*
13. *Ares(2022)2605155 email_Redacted*
14. *Ares(2022)3938580 Short notes of meeting with President vdL and Google on 30 March 2022.docx_Redacted*
15. *FW_Meeting request with Google and President von der Leyen (Ares(2022))*
16. *Ares(2022)2605155 Thank you letter from Google CEO for the meeting in Brussels_Redacted*
17. *Ares(2022)2126669 Microsoft Report 17.03.2022 EVP_Redacted*
18. *Ares(2022)1823001 Microsoft RE_Meet up_Redacted*
19. *Ares(2022)2022751 Microsoft 17.03 Table of contents.docx_Redacted*
20. *Ares(2022)2022751 Microsoft 17.03 Steering brief.docx_Redacted*
21. *Ares(2022)2022751 Microsoft 17.03 Recovery and resilience facility.docx_Redacted*
22. *Ares(2022)2022751 Microsoft 17.03 Digital.docx_Redacted*
23. *Ares(2022)2022751 Microsoft 17.03 Trade and technology council*
24. *Ares(2022)1967898 Google RE_Meeting requests with Google_Redacted*
25. *Ares(2022)2618094_Google ACK Thank you letter to EVP Vestager from Google_Redacted*
26. *Ares(2022)2869279 Google 30.03 (If raised) Data protection.docx_Redacted*
27. *Ares(2022)2869279 Google 30.03 Data Act.docx_Redacted*
28. *Ares(2022)2869279 Google 30.03 Digital Services Act.docx_Redacted*
29. *Ares(2022)2869279 Google 30.03 Google input on impact assessment for adapting liability rules to the digital age.pdf*
30. *Ares(2022)2869279 Google 30.03 Product Liability Directive & AI liability.docx_Redacted*
31. *Ares(2022)2869279 Google 30.03 Steering brief.docx_Redacted*
32. *Ares(2022)2869279 Google 30.03 Table of contents.docx_Redacted*
33. *Ares(2022)3864041 report meeting EVP vestager-Google 30.03.2022_Redacted*

With regard to the documents listed above, a complete disclosure of the identified documents is prevented in view of the considerations set out below.

First, full disclosure is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other institutions or natural persons.

Article 9(1)(b) of the Data Protection Regulation 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 neither express any particular interest to have access to these personal data, nor put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Second, some of the documents include information on Commission procedures that are currently ongoing and their disclosure could undermine the process concerned. As a result, complete disclosure of these documents is prevented by the exception to the right of access laid down in Article 4(3) of Regulation (EC) No 1049/2001.

Third, some of the documents additionally may contain information related to commercial interests of a natural or legal person, which has also been redacted as its disclosure is prevented by the exception to the right of access laid down in the first subparagraph of Article 4(2) of Regulation (EC) No 1049/2001. Please note that documents originating from third parties 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 originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Finally, the following documents contains information of ongoing international negotiations: 1. *Ares(2022)3979173 - Briefing Microsoft Trade and technology council*, and 23. *Ares(2022)2022751 Microsoft 17.03 Trade and technology council*

The disclosure of documents concerning the EU-US Trade and Technology Council would undermine the protection of the public interests as regards international relations. It is therefore prevented by the exception laid down in Article 4(1), third indent of regulation (EC) 1049/2001.

Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 provides that the 'institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations [...]'].

The above mentioned documents that fall under the scope of your request discloses the EU's position on the Trade and Technology Council, as well as the overall strategies and aims for the Trade and Technology Council. These documents was drafted for internal use of the Commission.

There is a concrete risk that the public disclosure of documents on this would affect the mutual trust between the EU and the US and thus undercut their relations. It should be noted that the way in which the authorities of a third country perceive the decisions of the European Union is a component of the relations established with that third country. The quality of our relations with third countries depend on that perception.

As per settled case-law, 'disclosure by the Union, to the public, of its own negotiating positions, when the negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating capacity of the Union¹. Disclosure of the documents could undermine the room for negotiation needed by the European Union and its Member States to conclude those negotiations².

Against this background, we consider that public disclosure of such documents would negatively affect both the ability of the European Commission to establish and maintain

¹ Judgment of 19 March 2013 in Case T-301/10, *In 't Veld v Commission*, EU:T:2013:135, paragraph 125.

² See also Judgment of 25 April 2007, *WWF European Policy Programme v Council of the European Union*, T-264/04, EU:T:2007:114, paragraph 41.

efficient and trust-based negotiating relations with the United States in the context of the Trade and Technology Council and to effectively defend EU interests in the context of the ongoing discussions within the Trade and Technology Council. We consider that risk as reasonably foreseeable and non-hypothetical, as it would reveal the institution's approaches and preferences, as well as political analysis, thus weakening its negotiation position towards its United States counterparts.

We have also examined the possibility of granting partial access in accordance with Article 4(6) of Regulation (EC) No 1049/2001. However, no meaningful partial access is possible once all parts of the document protected by Article 4(1)(a), third indent (protection of international relations) are redacted. *Ares(2022)3979173 - Briefing Microsoft Steering brief_Redacted* also contains information about discussions in the Trade and technology Council that are covered by this exception. However, partial access to this document is granted.

Please note that this list also includes documents that were drawn up for internal use under the responsibility of the relevant services of the European Commission. They reflect solely the author's interpretation of the interventions made and do not set out any official position of the third parties to which the document refers, which was not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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

Unit C.1. 'Transparency, Document Management and Access to Documents'

BERL 7/076

B-1049 Brussels, or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Electronically signed

Elisa Roller
Director

Enclosure: disclosed documents