



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

The Director-General

Brussels  
CNECT.R.4

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***Via email:***  
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**Subject: Your access to documents request EASE 2022/5796**

Dear Ms Goujard,

We refer to your email of 11 October 2022 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 (CE) No 1049/2001’), which was registered on 12 October 2022 under the reference number indicated in the subject of this letter.

## **1. SCOPE OF YOUR APPLICATION**

Your request reads as follows:

*“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:*

*Breton cabinet and Roblox Corporation on 27/09/2022 [...] Breton cabinet and Spotify on 07/09/2022 [...]*

*On those meetings, I am requesting the following documents:*

*-All minutes, agendas, summary, memos and any other reports of these meetings, issued both in preparation and after the meetings took place.*

- *All correspondence including attachments (including, but not limited to any emails, correspondence or telephone call notes) and follow ups, between any Directorates General/the cabinet, Commissioner Breton and the companies/organizations or any intermediaries representing their interests.*
- *All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) and follow ups, between any Directorate Generals, the cabinet and Commissioner Breton about those meetings, issued both prior and after.*
- *All documents prepared for the meetings and exchanged in the course of the meetings between both parties”.*

## **2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST**

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

- Email exchanges, 30 August 2022 to 6 September 2022, ARES(2022)7422261, (**“Document 1”**)
- BTO, Meeting with Roblox, 27-09-2022, ARES(2022)6709362, (**“Document 2”**)
- Summary of meeting, CAB Breton, ARES(2022)6210683, (**“Document 3”**)
- Briefing, meeting with Spotify, ARES(2022)6532296, (**“Document 4”**)
- Email, 9 May 2022, Spotify, ARES(2022)3542510, (**“Document 5”**)
- Letter, 9 May 2022, Spotify, ARES(2022)3542510 (**“Document 6”**)
- Email, 21 September 2022, Spotify, ARES(2022)6541171, (**“Document 7”**)
- Letter, 21 September 2022, Spotify, ARES(2022)6541171, (**“Document 8”**)

Please note that part of your request has also been attributed to the Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW). The present reply concerns only the meeting mentioned in the quote of your request above and falling under the remit of the Directorate-General for Communications Networks, Content and Technology (DG CONNECT).

The other parts of your request covering areas falling under the responsibility of Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) will be addressed by the relevant service.

## **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 party, we have arrived at the conclusion that partial access can be granted to Documents 1-4, whilst access is denied for the remaining documents, as disclosure of these (parts of) the documents is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

### **A. Partial Disclosure**

#### *(i) Protection of the decision-making process*

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.'*

Parts of Document 4 contain informal views and positions of the Commission services on the Artificial Intelligence Act, for which the legislative decision-making process is ongoing as the legislative act at stake has not been adopted yet.

The risk of disclosing information concerning preliminary opinions of the Commission services before the adoption of the legislative act 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 to external pressure during the ongoing 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, we consider that pursuant to Article 4(3) first subparagraph of the Regulation 1049/2001, access cannot be granted to the abovementioned parts of Document 4.

According to the second subparagraph of Article 4(3) of Regulation 1049/2001, '*access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure in view of the protection of the decision-making process.*'

Parts of Document 4 contain information on the Digital Markets Act (DMA), which form part of deliberations and preliminary positions of the European Commission for which the decisions have been taken.

The public disclosure of these internal views would deter the European Commission from freely expressing opinions and having frank, internal discussions, if they were to be made publicly available. Furthermore, this would pose a continued risk to discussions and deliberations on the implementation of the DMA and would expose the European Commission to undue external pressure and disseminate preliminary conclusions that do not represent the final position of the European Commission. The risk of disclosure of these views and reflections put forward in the parts of the document at question would seriously undermine the decision-making process. That risk is also reasonably foreseeable and not purely hypothetical. In light of the foregoing, we consider that pursuant to Article 4(3) second subparagraph of the Regulation 1049/2001, access cannot be granted to the abovementioned parts of Document 4.

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

#### *(ii) Protection of commercial interests*

The first indent of Article 4(2) 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.

Parts of Documents 2-4 contain sensitive information, views and positions related to commercial interests of the legal entity concerned. The disclosure of these parts would harm commercial interests of the legal entity. There is a real and non-hypothetical risk that disclosure of these parts of the above-mentioned documents could undermine and seriously affect the commercial interests of the company at question. Therefore, access to these parts of the Documents 2-4 cannot be granted as the disclosure is prevented by the exception to the right of access referred to above.

Consequently, the above-mentioned parts of Documents 2-4 have been blanked out.

*(iii) Protection of privacy and integrity of individuals*

Full disclosure of Documents 1-4 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:

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

Article 9(1)(b) of the Data Protection Regulation <sup>(1)</sup> 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) 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 Documents 5-8 cannot be granted as their disclosure is prevented by exceptions laid down in Article 4 of Regulation 1049/2001.

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<sup>(1)</sup> 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.

#### *(i) Protection of commercial interests*

Documents 5-8 are covered by the exception of Article 4(2) first indent of Regulation 1049/2001 for the protection of commercial interests. Documents 5- 8 originate from a third party and contain confidential and commercially sensitive information related to the respective third parties' positions, views and strategies. We could not obtain the views of the concerned third party about a potential disclosure within the given timeframe. After assessment, we have come to the conclusion that a disclosure of the Documents 5-8 could undermine their commercial interests. Therefore, access is refused to these Documents as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

In addition, parts of Documents 5-8 contain personal data, in particular the names and functions of Commission staff members not pertaining to the senior management as well as the names, functions, contact details, handwritten signatures 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 A (iii). Moreover, part of Document 7 fall outside the scope of the request.

### **4. PARTIAL ACCESS**

We have considered whether partial access could be granted to the Documents to which access is refused. 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.

### **5. OVERRIDING INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of the documents identified. 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

### **6. 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 Commission documents](#). You may reuse the (parts of) disclosed Documents 1-4 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 2-4 were drawn up for internal use under the responsibility of the relevant staff member of DG CONNECT. They solely reflect the author's interpretation of the interventions made. They do not reflect the position of nor do they commit the Commission, DG CONNECT and/or any third party referred to and cannot be quoted as such.

Please note also that part of Document 1, 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 its reuse.

## 7. 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 **by asking for a review via your portal <sup>(2)</sup> account** (available only for initial requests submitted via the portal account), or via the following address:

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Brussels

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures: (4)

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(<sup>2</sup>) <https://www.ec.europa.eu/transparency/documents-request>