



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

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

Brussels  
SG.D.1/TKV

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**Subject: Your applications for access to documents – GESTDEM 2022/3050  
and GESTDEM 2022/3051**

Dear Ms Palstra,

We refer to your emails of 24 May 2022 in which you make two requests 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 25 May 2022 under the above-mentioned reference numbers. We further refer to our emails of 20 and 21 June 2022 informing you about the extension of the deadline, our references Ares(2022)4521789 and Ares(2022)4546391.

By your application, you request access to:

*All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to:*

- 1. the meeting on 2022-05-18 between Penelope Papandropoulos and Werner Stengg and Microsoft Corporation. [GESTDEM 2022/3050]*
- 2. the meeting on 2022-05-18 between Margrethe Vestager and Microsoft Corporation. [GESTDEM 2022/3051]*

We have identified the following documents responsive to your requests:

- 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*

With regard to the documents identified, a complete 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 (Regulation 2018/1725) 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.

Moreover, 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.

Furthermore, some of the documents 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, document 1 contains information of ongoing international negotiations.

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 Union<sup>1</sup>. Disclosure of the documents could undermine the room for negotiation needed by the European Union and its Member States to conclude those negotiations<sup>2</sup>.

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 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. Document 10 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.

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

<sup>2</sup> 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.

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](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

Elisa Roller  
Director

Enclosure: disclosed documents