

28 February 2022

Dear Executive Vice-President Vestager,
Dear Commissioner Breton,

As civil society organisations and trade unions working on transparency, democracy and digital rights we are writing to you **to request urgent improvements to the transparency of the trilogue negotiations of the Digital Markets Act and the Digital Services Act**. These two complementary proposals have the potential to make digital services safer, and to protect and empower users, workers and small businesses. Together, they touch upon a vast array of issues that can have concrete consequences for peoples' lives.

The Digital Services pack has also been the target of intense lobbying since the onset, especially by Big Tech firms and its intermediaries. Research¹ by Lobbycontrol² and Corporate Europe Observatory³ has shown how well-resourced companies have attempted to influence this process at all stages and managed to achieve unparalleled levels of access to the discussions. Civil society organisations and citizens cannot match the resources spent and the access gained by Big Tech. Secrecy of policy making only further intensifies this unequal playing field, shutting citizens off from crucial discussions that will have an impact on their lives.

We were therefore disappointed to see that the European Parliament and the Council of the European Union have not made arrangements to ensure that the trilogue negotiations of these important files would be transparent and easily accessible. The agendas are not public and neither the European Parliament or the Council of the European Union have published the up-to-date multi-column document with the agreements achieved thus far or the preliminary positions of the Presidency of Council in relation to the amendments proposed by the Parliament (the 4th column).

Curiously, the European Parliament and Council published an empty DMA four column document at the beginning of February 2022, described as the most recent version of the document, but dated January 11. Leaks of newer versions have exposed that this is not true.⁴

Trilogue negotiations are a crucial moment of EU policy-making: the time when EU Parliament and Council discuss and reach agreements on EU policy proposals. According to the EU Parliament, in 2018 between 70 and 80% of the European Union's legislative acts are adopted following a trilogue. It should be noted that, in the majority of cases, the final trilogue agreement is swiftly adopted. Yet, meetings are held behind closed doors and access to documents relating to these discussions are often rejected.

As you will be aware, in 2018 the General Court in case T-540/15 De Capitani v Parliament⁵ ruled that these types of documents not only fall within the scope of access to documents regulation, but also constitute legislative documents, and hence heightened levels of transparency and openness are essential to ensure the legitimacy of this process. Further, the Court affirmed that

"If citizens are to be able to exercise their democratic rights they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information" .

To ensure that the trilogue negotiations on the Digital Services Act and Digital Markets Act are genuinely transparent and open to citizens, we ask the co-legislators to:

- Publish proactively, on a rolling basis a list of documents tabled during trilogue negotiations, in line the European Ombudsman's recommendation⁶;
- Make public an up-to-date calendar of trilogue meetings including summary agendas;

1 <https://corporateeurope.org/en/2021/08/lobby-network-big-techs-web-influence-eu>

2 <https://www.lobbycontrol.de/2021/12/lobbycontrol-recherche-das-sind-die-lobbytreffen-der-dma-berichterstatterinnen/>

3 <https://corporateeurope.org/en/2022/01/how-corporate-lobbying-undermined-eus-push-ban-surveillance-ads>

4 https://twitter.com/lobbyctrl_tech/status/1489215461933858818?cxt=HHwWhlCYqdHk4KopAAAA

5 <https://curia.europa.eu/juris/document/document.jsf?jsessionid=DF2462744CB738E58A5817B497F94D51?text=&docid=200551&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2875242>

6 <https://www.ombudsman.europa.eu/en/decision/en/69206>

- Publish proactively the four-column document on a rolling basis.

We thank you in advance for considering these proposals. We would welcome the opportunity to further discuss these issues with you in a meeting. Should you have any question, please do not hesitate to come back to us.

Yours sincerely,

Corporate Europe Observatory
Lobbycontrol
FragDenStaat
Access Info Europe
Transparency International EU
The Good Lobby
SumOfUs
Daphne Caruana Galizia Foundation
Reporters Without Borders (RSF)
The Coalition For Women In Journalism (CFWIJ)
Iraqi journalism Rights Defense Association (IRJDA)
Fair Vote
Foxglove
Global Witness
Defend Democracy
Gong
Vouliwatch
Statewatch
Waag Future Lab
Inštitút ľudských práv - Human Rights Insitute
Civil Liberties Union for Europe (Liberties)
Access to Information Programme Foundation
Citizens Network Watchdog Poland
UNI Europa
European Trade Union Confederation (ETUC)
European Federation of Public Services Unions (EPSU)
AK EUROPA
Alliance4Europe
Institute for Strategic Dialogue (ISD)
People Vs Big Tech
Irish Council for Civil Liberties
Peter Tatchell Foundation
ARTICLE 19
Panoptykon Foundation
Lie Detectors
Je Suis Là
Global Action Plan
Simply Secure
Ranking Digital Rights
Uplift
digiQ
Missing Children Europe
ASEED Europe