



Initiative für  
Transparenz  
und Demokratie e.V.

## Médiateur européen

Emily O'Reilly

1 avenue du Président Robert Schuman  
CS 30403  
F-67001 Strasbourg Cedex

7 February 2023

## What is the decision or matter about which you complain? When did you become aware of it?

We hereby complain about the European Parliament's handling of a series of access to documents requests regarding the four-column document (4CT) for the then ongoing Digital Markets Act (DMA) trilogue. The initial requests for access to documents were filed during the trilogue negotiations; however, the relevant documents were only provided in full in response to our confirmatory application, which was subject to several deadline extensions and was only answered once the DMA negotiations had already been completed.

### Background to the complaint:

On 7 February 2022, we filed an access to documents request [request](#) asking for the 4CT on the ongoing DMA trilogue. The scope of our request included the results of the most recent political trilogue at that time (3 February 2022).

In response to our request, the European Parliament provided us with a link the next day to a website where the 4CT on the DMA negotiations could be downloaded as of 11 January. According to the Parliament's answer, this was "all information on the DMA that is currently available". However, [leaked 4CT](#) showed that this was not true.

Therefore, we submitted a confirmatory application on 26 February 2022. The time limit for the answer was repeatedly extended and delayed by the European Parliament, and as a result we didn't get an answer until 27 April. This was four weeks after an agreement was reached on the DMA at the last political trilogue on 27 March 2022.

Meanwhile, another access to documents request on the 4CT for the Digital Markets Act (DMA) and Digital Services Act (DSA) trilogue had been filed via the [FragDenStaat website](#); this was not answered until 3 May 2022 – again, not until after the end of the

1/5

DMA and DSA negotiations. The exact same request had also been filed by 39 EU citizens. This reflects the high degree of public interest in these negotiations.

Timeline of events:

- 11/1/2022: First DMA trilogue
- 2/2/2022: Political trilogue meeting
- 3/2/2022: Leak of the 4CT as of 02/02/2022:  
[https://twitter.com/lobbyctrl\\_tech/status/1489215461933858818](https://twitter.com/lobbyctrl_tech/status/1489215461933858818)
- 3/2/2022: Political trilogue meeting
- 7/2/2022: Access to documents request by LobbyControl asking for the 4CT on the ongoing DMA trilogue, which should include the results of the most recent political trilogue at that time (3/2/2022)
- 8/2/2022: Reply from the EU Parliament: "You can find all information on the DMA that is currently available, including the most recent 4-column table, here." (Link: <https://www.europarl.europa.eu/committees/en/digital-markets-act-dma-/product-details/20220207CAN64922>). However, the only link there is for the negotiation mandate from the first political trilogue on 11/1/2022: <https://www.europarl.europa.eu/cmsdata/244868/1247759EN.pdf>
- 26/2/22: We submit our confirmatory application
- 11/3/2022: EU Parliament confirms receipt of our confirmatory application
- 18/3/2022: EU Parliament extends the time limit by a further 15 working days
- 27/3/2022: Last political DMA trilogue meeting, at which an agreement is reached
- 11/4/2022: We are informed that the response is "now being prepared and will reach you shortly via mail"
- 27/4/2022: We finally get an answer to our confirmatory application

## What do you consider that the EU institution or body has done wrong?

EU citizens and residents have the right of access to 4CT documents as established by the General Court of the European Union in its ruling of 22 March 2018 (T-540/15). The General Court found that access to 4CT documents is linked to EU citizens' and residents' ability to be informed about, express their opinion on, and therefore participate in EU decision-making and, in particular, the EU legislative process.

*As stated by the Court in case T-540/15, "Article 10(3) TEU states that every citizen is to have the right to participate in the democratic life of the Union and that decisions are to be taken as openly and as closely as possible to the citizen. Thus, the expression of public opinion in relation to a particular provisional legislative proposal or agreement agreed in the course of a trilogue and reflected in the fourth column of a trilogue table forms an integral part of the exercise of EU citizens' democratic rights, particularly since, as noted in paragraph 72 above, such agreements are generally subsequently adopted without substantial amendment by the co-legislators."*

This stance on the part of the EU court has been further echoed in recent case law regarding access to legislative documents (see, for instance, case T-163/21 para. 84).

The Court therefore establishes a clear link between access to EU documents (in the present case, 4CT documents) and the democratic right of participation. This makes their timely release essential; if access to information is to enable the right to participate in decision-making, disclosure must take place while decision-making is ongoing. If documents are only released once the decision-making process has concluded, the ability to participate has passed, thus depriving EU citizens of their democratic right.

With this in mind, we believe the European Parliament, in their handling of our requests for access to the DMA/DSA 4CT document, has de facto circumvented its obligation to release the requested documents. It has done so by delaying its response until negotiations were completed, thereby providing the documents only once they had been robbed of their crucial value: to enable citizens and civil society to participate in the EU legislative process. We believe this constitutes maladministration.

The delayed publication of these documents, including waiting until after the end of negotiations, is unfortunately common with access to documents requests. The response and documents provided are still useful as historical documentation and in order to have a better understanding of the legislative process, but they are of little use for those who want to follow the decision-making process in order to participate in it. The European Parliament's refusal to release documents in a timely manner therefore makes requests for access to documents pointless.

It should be noted that the European Parliament had no excuse or valid premise that could justify the delay of its response and the release of the requested documents. Since the EU General Court had already established that EU institutions must release 4CTs upon request (T-540/15), the European Parliament did not need to engage in any lengthy legal or practical evaluation with regards to the pertinence of such a release, nor were any elaborate third-party consultations required. Instead, the requested documents were clearly suitable for release.

The Parliament's delay in providing the requested documents also violates, in our opinion, Articles 7(1) and 8(1) of Regulation [1049/2001](#), which establish that initial applications and confirmatory applications "shall be handled promptly." The Parliament also contravened Articles 7(3) and 8(2) of Regulation 1049, which state that "In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given." However, our requests and confirmatory applications did not fall under these criteria since requests for 4CT documents are not "exceptional". Furthermore, the scope of our applications did not cover "a very long document" or "a very large number of documents". Finally, it's worth noting the European Parliament failed to provide detailed or appropriate reasons that could justify the need for such a delayed response.

It should also be stressed that the possibility to exercise our democratic right is particularly important in the case of the DMA and the DSA, as they are urgently needed regulations to limit the democratically harmful abuse of power by Big Tech and therefore strongly affected by Big Tech lobbying. The Parliament itself admits this in its answer and speaks of a "high level of engagement from stakeholders". It is safe to assume that Big Tech itself had access to the 4CT of the DMA and DSA negotiations.

This is shown by the specific change requests of the companies, which refer to compromise proposals and individual articles during the trilogue negotiations as revealed by an [access to document request](#) to the Swedish Government and a [parliamentary question](#) to the federal government in Germany. There is clearly no question of a level playing field here. More information on the imbalance of resources and access can be found in LobbyControl and Corporate Europe Observatory's [report](#) on the lobby power of Big Tech.

Given Big Tech's lobby power, it is all the more questionable that information about the progress of negotiations on this important regulation was not released to civil society or only after the negotiations had been concluded.

Furthermore, with negotiations on the regulation of Big Tech (AI Act, Data Act, etc.) and other important legislation upcoming, the need for the European Parliament to adhere to its legal obligations and to comply with EU case law on the disclosure of 4CT documents assumes particular importance.

## What, in your view, should the institution or body do to put things right?

Citizens are only able to follow a decision-making process in detail and to exercise their democratic right of participation if 4CT documents are released promptly and in a timely manner. This inevitably requires their release *during* an ongoing trilogue, and not after its conclusion. Timely access to documents is also essential in order to make participation truly democratic in practice, rather than a matter of certain actors having access or closeness to decision-makers while others are left out, unable to make their voices heard during the legislative process.

In our view, the only way for the European Parliament to comply in full with its legal obligations and EU case law is through prompt and proactive publication of 4CT documents.

Proactive publication is the best way to guarantee the timely and prompt release of 4CTs as the European Parliament has the ability to make the documents available immediately after a new round of negotiations has concluded.

On the one hand, this would make information widely and democratically available to all those wishing to participate in the decision-making process, which would grant all stakeholders an equal opportunity to be informed and make their voices heard while the EU legislative process is ongoing.

On the other hand, proactive publication is also the most efficient way of granting the release of 4CTs, since the Parliament wouldn't need to wait for an access to documents request to be filed, then process and answer that request, grant access to the requested 4CT documents in compliance with the relevant EU case law, and potentially repeat that process with multiple similar or identical requests. In this regard, proactive publication is not only an easier and speedier way to allow EU citizens to access 4CT documents, it is also a more efficient use of the Parliament's time and resources.



Initiative für  
Transparenz  
und Demokratie e.V.

As civil society organizations, we routinely follow and scrutinize EU legislation in the making. We have experienced first-hand how the secrecy shrouding trilogues undermines democratic oversight of and participation in EU policy-making. The release of 4CTs is key in enabling civil society organizations and EU citizens to play a role in scrutinizing and shaping decision-making in the public interest. In order to achieve this, and to do so in a truly democratic manner, prompt proactive publication of 4CT documents is of the essence.

This simple step towards greater transparency is an opportunity to strengthen European democracy and enhance civic participation in the European project.

We would also stress that, until prompt proactive publication of 4CT documents becomes a reality, all access to documents requests for 4CT documents should be answered in a timely and prompt manner, and that a mere couple of days since the registration of the request should suffice in order to grant their release. We would also emphasize that deadline extensions should never be applied in order to circumvent the legal obligation to grant the release of requested documents, and should never be used in order to obstruct the democratic right to participate in the EU legislative process.

Yours sincerely,

Felix Duffy (LobbyControl), Luisa Izuzquiza (FragDenStaat), Margarida Silva (SOMO),  
Bram Vranken (Corporate Europe Observatory)