



## **Ombudsman asks Council to grant access to documents related to negotiations on 'Digital Markets Act'**

News - 02/03/2022

The Council should grant access to documents related to negotiations on the Digital Markets Act and its failure to do so is maladministration, an Ombudsman inquiry has found.

The Ombudsman's finding follows a complaint by a network of journalists seeking access to Member States' initial comments and questions on the draft regulation, which aims to create a digital space where users' fundamental rights are protected and businesses have a level playing field.

The Council identified a total of 28 working documents in response to the request by the journalists. It granted full public access to five documents and partial access to a further ten. However, none of the disclosed information contained any Member State positions. Access was granted to the text of the Commission's proposal only.

The Council argued that releasing Member States' initial questions and comments about the draft regulation risked misinterpretation by the public, as the final national positions might be substantially different. It also argued that disclosure at an early stage could lead to unprecedented lobbying.



In her analysis, the Ombudsman noted that being willing to change position and achieve compromise is a normal and even expected part of democratic debate. Additionally, in order for citizens to be able to exercise their democratic right to scrutinise and participate in debate around the draft law, they must be able to follow it as it develops.

The Ombudsman also found that the Council had not explained why disclosure of the documents would further increase lobbying.

She asked the Council to give full public access to the requested legislative documents.

The inquiry finding follows other Ombudsman work in this area, including the broad own-initiative inquiry, opened in 2017, into [legislative transparency in the Council \[Link\]](#). In that inquiry, the Ombudsman criticised the Council's failure to systematically record the identity of Member States taking positions during discussions on draft legislation, and the widespread practice of disproportionately marking documents as not for circulation, or "LIMITE".