



Commissioner Jessika Roswall

Environment, Water Resilience and a Competitive Circular Economy

Dear Commissioner,

We are writing to express our utmost concern following media reports by Investigate Europe and others which shows that the EU Commission has ad verbatim copy-pasted industry lobby positions in the Delegated Act on the rating scheme for data centres (2024/1364).

Article 5.5 is almost word-for-word identical to wording suggested by the US tech company Microsoft and the lobby group DigitalEurope. It states that the Commission and the Member States will keep all information on individual data centres confidential in accordance with Regulation (EC) No 1049/2001 and Directive 2003/4/EC.

Given that the Commission intends to triple its data centre capacity within the next five years, it is extremely worrying that vital information regarding the environmental impact of data centres is being withheld from the public. This is especially concerning given that the rapid build-out of data centres across Europe is putting increasing strain on electricity grids and contributing to rising electricity prices.

Moreover, Article 12 of the Energy Efficiency Directive aims to make all information on data centres publicly available if it is larger than 500 kW, *unless* specific information falls under trade, business secrets, or confidentiality, the Delegated Act keeps *all* information on the key performance indicators of individual data centres under wraps. The Delegated Act therefore contravenes the letter and intent of Article 12 of the EED.

Investigate Europe interviewed ten legal scholars who are of the opinion that Article 5.5 could violate EU access-to-information law and the Aarhus Convention. Furthermore, an email obtained by Investigate Europe reveals that the Commission has actively discouraged EU member states from granting public access to the key performance indicators of individual data centres, seemingly without striking a balance between business confidentiality and the public interest in disclosing this information.

As the Commission is currently updating the Delegated Act, and seems set on largely retaining Article 5.5, we urge you to delete Microsoft's amendment and ensure transparency regarding the environmental impact of individual data centres.

In addition, we ask you to urgently answer the following questions:

- Is it standard practice for the Commission to transpose stakeholder proposals into Delegated Acts without appropriate due diligence?
- Has the Commission conducted a legal analysis or impact assessment of Article 5.5 of Delegated Act (EU) 2024/1364 regarding the data centre rating scheme? If so, could you please provide a copy of the legal analysis?
- Will the Commission conduct a legal analysis as part of the ongoing update to the Delegated Act of the proposed changes to Article 5.5?
- In dealing with FOI-requests, how does the Commission strike the balance between business confidentiality and the public interest in disclosing this information, as required by Article 4(2) of Regulation (EC) No 1049/2001 and Article 4(2)(d) of Directive 2003/4/EC?



Yours faithfully,

1. MEP David Cormand
2. MEP Marie Toussaint
3. MEP Alexandra Geese
4. MEP Bruno Tobback
5. MEP Hanna Gedin
6. MEP Jonas Sjöstedt
7. MEP Lynn Boylan
8. MEP Rudi Kennes
9. MEP Majdouline Sbai
10. MEP Mounir Satouri
11. MEP Melissa Camara
12. MEP Saskia Bricmont
13. MEP Per Clausen
14. MEP Cristina Guarda
15. MEP Lena Schilling
16. MEP Gordan Bosanac
17. MEP Benedetta Scuderi
18. MEP Ignazio Roberto Marino
19. MEP Tilly Metz
20. MEP Sara Matthieu
21. MEP Marketa Gregorova
22. MEP Jutta Paulus
23. MEP Thomas Waitz
24. MEP Kira Peter-Hansen
25. MEP Rasmus Nordqvist
26. MEP Villy Søvndal
27. MEP Rima Hassan
28. MEP Arash Saeidi
29. MEP Elena Sancho Murillo
30. MEP Anna Cavazzini
31. MEP Katrin Langensiepen
32. MEP Michael Bloss
33. MEP Martin Häusling
34. MEP Erik Marquardt
35. MEP Daniel Freund