



EUROPEAN COMMISSION

Directorate General for Financial Stability, Financial Services and Capital Markets Union

Director-General

Brussels, **27. 11. 2014**
DB/tt (2014) 4151378

Mr Hoedeman
Corporate Europe Observatory
(CEO),
Rue d'Edimbourg 26,
1050 Brussels, Belgium

by registered letter with acknowledgment
of receipt

Advanced copy per mail

Dear Mr Hoedeman,

I refer to your e-mail of 5 September 2014 (registration number GESTDEM 3967/2014) sent to the Commission under the provisions of Regulation (EC) 1049/2001 regarding public access to documents. I also refer you to my letter dated 10 November 2014.

In the above mentioned e-mail and former correspondence, you requested access to the copies of minutes of meetings between DG MARKT officials/representatives of Directorates F, G and H, and representatives of "industry" (including individual companies, lobby consultancies and law firms, and/or industry associations) from 1 January 2013 to 18 March 2014.

We have identified 67 notes of meetings between management of DG MARKT dealing with financial services (Directorates F, G and H and Unit 02) and industry representatives which could fall within the scope of your request. A list of these notes is enclosed.

We have carefully examined these notes in light of Regulation (EC) 1049/2001 regarding public access to documents. Following this examination, my letter dated 10 November 2014 included the notes of five meetings. The present letter covers the remaining 62 meeting notes.

In accordance with Regulation 1049/2001 none of these documents can be fully disclosed as they fall, partially or totally, within the categories of exceptions to disclosure provided for in Article 4 of Regulation 1049/2001. Half of these notes may however be partially disclosed.

1) Notes to which access is refused

For the reasons set out below, access is refused to the following meeting notes: 1, 2, 4, 5, 11, 12, 13, 15, 25, 28, 30, 34, 36, 37, 38, 43, 45, 46, 48, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, and 62.

The refusal of access is justified for one or several of the following reasons: i) the protection of commercial interests of a natural or legal person, ii) the protection of the financial, monetary or economic policy of the Community or a Member State and iii) the protection for the purpose of inspections, investigations and audits.

Protection of commercial interests of a natural or legal person

Article 4§2 first indent of Regulation (EC) 1049/2001 provides that: "The *institutions shall refuse access to a document where disclosure would undermine the protection of (...) commercial interests of a natural or legal person, including intellectual property*".

Article 339 of the Treaty on the functioning of the European Union (TFUE) requires members of the staff of the EU institutions to refrain from disclosing "information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their costs components".

It has been established by the Court of Justice notably in the 'Bank Austria Creditanstalt' judgement (T-198/03 of 30 May 2006) that the protection of commercial interests is not limited to the protection of the business secrets of an entity. Careful examination of the notes referred to above shows that the disclosure of elements of the commercial strategy or sensitive information shared with us by companies or organisations could harm their commercial interests. We cannot, therefore, release meeting notes that reflect views expressed by companies or organisations that are not publicly available views, but opinions on the strategy of the companies involved on our comments thereon.

Protection of financial, monetary or economic policy of the Community or a Member State

Article 4§1 fourth indent of Regulation (EC) 1049/2001 provides that "The *institutions shall refuse access to a document where disclosure would undermine the protection of (a) the public interest as regards (...) the financial, monetary or economic policy of the Community or a Member State*";

Examination of the reports of meetings addressed in notes 51 and 56 to 62 shows that their disclosure may have implications for financial stability and could undermine the protection of the financial policy of the Community.

Protection of the purpose of inspections, investigations and audit

Article 4§2 third indent of Regulation n° 1049/2001 provides that the institutions shall refuse access to a document where disclosure would "*undermine the protection of [...] the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.*"

Document 1 is an exchange of views concerning possible infringements of EU law. We cannot grant access to this note because of the negative effects that disclosure would have on the conduct of investigations of the Commission in the framework of possible

infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union.

2) Note to which partial access is granted

For the remainder of the notes, in accordance to Article 4 of Regulation 1049/1001/EC and after examination of notes, full release of documents is not possible as doing so would affect the protection of commercial interests of the legal persons concerned. However, we can release parts of these notes, namely notes 3, 6, 7, 8, 9, 10, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 29, 31, 32, 33, 35, 39, 40, 41, 42, 44, 47, 49 and 50. A copy of these notes is enclosed.

In accordance with Article 4§1 (b) of Regulation 1049/2001/EC and Regulation 45/2001/EC of the European Parliament and of the Council of 18 December 2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and the free movement of such data, in all notes partially released, names of some individuals have been withdrawn (Commission staff below the level of Head of Unit and companies or organisations participants).

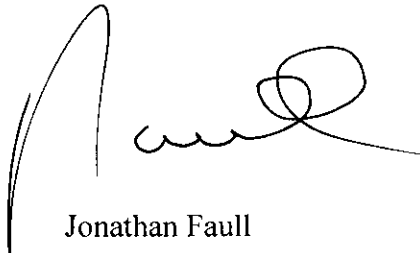
When examining your request, we came to the conclusion that there would be no overriding public interest in disclosing the notes which we, partly or fully, consider as falling within the exceptions laid down at article 4 of Regulation 1049/2001.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application inviting the Commission to review its position.

Such a confirmatory application should be addressed, within 15 working days upon receipt of this letter, to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-5
BERL 5/340
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Jonathan Faull

Enclosures: list of notes refused and partially disclosed and notes disclosed (31)
Contact: Boulouque Didier, didier.boulouque@ec.europa.eu