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

The Director General

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Registered letter with
acknowledgment of receipt

Ms. Vicky Cann
Corporate Europe Observatory
26, rue d'Edimbourg
1050 Bruxelles

**Subject: Your application for access to documents: reference number
GESTDEM 2017/7654 (second part of your request)**

Dear Ms. Cann,

We refer to your e-mail dated 26 December 2017 in which you make a request for access to documents, registered under the above mentioned reference number. Your request is as follows:

"Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I would like to request a list of all lobby meetings held by DG Fisma since November 2015 where any or all of the following were discussed, to include the name of the lobby organisation, date, topic, and names of individuals attending:

- 'transparency for tax planning intermediaries'
- 'EU list of non-cooperative jurisdictions for tax purposes' (blacklisted tax havens)
- 'Anti-Money-Laundering Directive (AML)'
- country-by-country reporting proposal

"I would further like to request the minutes/ reports of all lobby meetings held by DG Fisma since November 2015 which involved one or more of the following organisations: KPMG, Deloitte, PricewaterhouseCoopers (PWC), Ernst & Young (EY), FTI Consulting, Hill & Knowlton, Fleishman-Hillard, Gide Loyrette Nouel (Gide), QED, The Skill Set, Albright Stonebridge Group LLC, European Business Initiative on Taxation (EBIT), Accountancy Europe, European Tax Adviser Federation, European Services Forum, Confédération Fiscale Européenne (CFE), BusinessEurope."

As regards the list of meetings, you received an answer concerning our DG on 19 January 2018.

As regards the second part of your request, 85 meetings have been identified as falling within the scope of your request (enclosed is a list of the 85 meetings). 78 minutes of meetings have been drafted. You are receiving a partial access for 77 minutes of meetings and a negative answer for the minutes of the meeting n° 43 dated 31 May 2017.

Please note that minutes of meetings have been drafted by DG FISMA services and might not reflect fully the opinion of third parties which were not consulted on the release of these minutes.

- Exception linked to the protection of personal data (all documents):

In all documents for which access is given, names of people working for external organisations and the names of civil servants in our Directorate-General below the level of Director as well as other personal data such as phone number and e-mail addresses have been redacted in the documents.

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable².

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

In case you disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position (see below).

- Exception linked to the institution's decision-making process (documents 7 and 15) and exception linked to investigations for document 7:

We could identify 2 other documents for which we have to refuse partially to give access to other parts of the documents, as disclosure is prevented by exception to the right of access laid down in Article 4 of Regulation 1049/2001. For document 15, we have deleted in the document the name of a Member State and the names of two Member States (MS) in document 7.

The exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 applies to this document: "Access to a document, drawn up by an institution

¹ Official Journal L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure".

As regards document 15, the disclosure of a specific Member State position as regards a possible Commission future initiative could seriously undermine the institution's decision process. As regards document 7, the Commission services are currently assessing the MS transposing measures as regards the latest legal amendment to the EU legislation for auditing. It is the preliminary stage before the Commission decides whether to open infringement cases against such MS and its possible legal reasoning.

Furthermore, document 7 is partially covered by the exception which is stated in Article 4(2) of Regulation N°1049/2011: "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 -, court proceedings and legal advice, the purpose of inspections, investigations and audits, unless there is an overriding public interest".

The decision not to grant you access to the documents, is based on the negative effects that disclosure would have on a future conduct of investigations of the Commission in the framework of infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union. This infringement investigation calls for genuine co-operation and an atmosphere of mutual trust between the Commission and the competent administrative body of the concerned Member State. Only in such a climate both sides can aspire to a rapid solution of the legal disputes and also reach such a solution.

In its judgment of the Court of first Instance of 5 March 1997 in case T-105/95, WWF UK v Commission (att 64) the Court considers, in effect, that the Commission is required to indicate, at the very least by reference to categories of documents, the reasons for which it considers that the documents detailed in the request which it received are related to the possible opening of an infringement procedure. It should indicate to which subject matter the documents relate and particularly whether they involve inspections or investigations relating to a possible procedure for infringement of Community law.

In conclusion, as regards document 7, the disclosure of previously identified transposition issues in some specific MS could undermine the discretionary power of the Commission to open infringement cases against such MS and its possible legal reasoning.

- Exception linked to the commercial interests (document 43):

The minutes of the meeting with the Corporate Platform for the Future of Occupational Pension in Europe (FOPE) held on 29 November 2016 (document 43) contain sensitive business information of the company and therefore cannot be released under the terms of the Access to Documents rules. The information would also reveal the commercial activity of the undertaking concerned in relation to our Directorate General.

As regards document n°43, article 4(2), first indent of Regulation (EC) No 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 (...)".

In this regard, it is useful to note that the "commercial interests" exception contained in the Regulation is an expression of the Commission's obligation of professional secrecy which is enshrined in Article 339 of the Treaty of the functioning of the European Union.

The article stipulates that the Commission shall take all necessary precautions to ensure that the protection of information covered by the obligation of professional secrecy and other confidential information is not undermined. This applies in particular to 'information about undertakings, their business relations or their cost components'.

In its judgment in the Bank Austria case, the Court of Justice defined the notion of "professional secrecy" as information "(...) known to a limited number of persons and whose disclosure is liable to cause serious harm to the person who has provided it or to third parties, whereas the interests liable to be harmed by disclosure must be objectively worthy of protection".

In examining your request, the possibility of granting partial access to the requested document 43 has been taken into consideration. However, it turned out that, after examination of the document and for the reasons cited above, the documents are covered in their entirety by the exception above mentioned, so that the release of parts of the documents cannot be envisaged.

As regards documents 7, 15 and 43, the exception laid down in Article (3) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the document. However, you have not been able to identify such an interest.

Therefore, I confirm my decision not to grant fully access to document n°43, and to give you partial access to all documents released, based on the exception of Article 4(3), of Regulation 1049/2001 (see above). Should you nevertheless wish to seek a review of this position, you may write to the Secretary-General of the Commission at the address below, confirming your initial request. You have 15 days from receipt of this letter in which to do so. After that period, your initial request will be considered as having been withdrawn.

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-4
BERL 5/282, B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Olivier GUERSENT

Copy: List of documents and documents released: 1 to 26, 28 to 35, 37 to 38, 40 to 42, 44, 46 to 66, 68 to 71, 73 to 78, 80 to 85

Demande d'accès aux documents

GESTDEM 2017/7654

N°	ID	Unité	Date Réunion	Participants (personnes morales)	Sujet	Minutes
						YES
						NO
1	3183	B3	04/05/2016	Ernst & Young	Eu-Canada Mineral Investment Facility	YES
2	2151	B4	13/05/2016	Ernst & Young	Visit of Audit Analytics	YES
3	2674	B4	10/11/2016	Ernst & Young	Meeting with Ernst & Young	YES
4	1894	B4	04/02/2016	Ernst & Young	Practical questions on the implementation of the new EU audit rules	YES
5	1680	B4	17/12/2015	Ernst & Young	Application of the new audit rules	YES
6	2937	B4	22/02/2017	Ernst & Young	EY Introduction	YES
7	2225	B4	18/05/2016	Ernst & Young	REFUSED PARTIALLY Implementation of the new EU audit rules	YES
8	2892	DDG	13/02/2017	Ernst & Young	Meeting to exchange views on the EU banking regulatory environment	YES
9	1784	DDG	19/01/2016	Ernst & Young	Exchange views and impart EY knowledge on EY's work across the EU with central banks and the banking constituency	YES
10	3580	DDG	12/12/2017	Ernst & Young	Meeting with EY	YES
11	2162	B1	13/05/2016	Accountancy Europe	Meeting on Withholding Tax (WHT)	YES
12	1833	B3	25/01/2016	Accountancy Europe	Meeting with FEE	YES
13	2036	B3	17/03/2016	Accountancy Europe	Fee workshop on the Non-Financial Information Directive	YES
14	2865	B4	03/02/2017	Accountancy Europe	Meeting with Accountacny Europe	YES
15	4362	B4	11/12/2017	Accountancy Europe	REFUSED PARTIALLY Meeting between FISMA B4 and Accountancy Europe	YES
16	2312	C1	09/06/2016	Accountancy Europe	FEE project on the Future of SME Reporting	YES
17	3662	O2	08/09/2017	Deloitte	Meeting on blockchain concerning AML and Data protection	YES
18	2936	B3	22/02/2017	Deloitte	ECG - European Contact Group Meeting	YES
19	2969	B3	06/03/2017	Deloitte	EU financial reporting and corporate reporting more broadly and possible ECG work in this field	YES
20	1928	B4	18/02/2016	Deloitte	Meeting with ICAEW & Deloitte on Audit Committees	YES
21	2721	D1	15/12/2016	Deloitte	Meeting Deloitte	YES
22	2177	D1	24/05/2016	Deloitte	Meeting Deloitte	YES
23	3411	D3	27/06/2017	Deloitte	Kick-off meeting for study on SEPA	YES
24	1625	C	15/12/2015	GIDE	Euronext-MIFID-EMIR	YES

25	2667	C	18/11/2016	GIDE	AIMA-demande de RDV avec le DG de la DG FISMA	YES
26	1811	C	18/02/2016	GIDE	Demande de rdv de la part d'AIMA concernant la proposition législative Titrisation	YES
27	3458	D1	05/07/2017	GIDE	leverage ration and impact on leverage models	NO
28	4173	D3	04/10/2017	GIDE	Meeting with First Data	YES
29	1552	D3	13/11/2015	GIDE	Meeting on 13/11/2015 - FISMA/D/3 with FDC, First Data Corporation and GIDE Loyrette Nouel	YES
30	3787	D3	04/10/2017	GIDE	Meeting request-commodity derivatives	YES
31	3800	E4	19/09/2017	GIDE	Visit of investment fund Davidson Kempner representatives to Brussels, with whom you met a couple years ago to discuss macro-economic/euro area developments	YES
32	1837	C4	24/02/2016	KPMG	Request for a meeting	YES
33	4359	C4	24/10/2017	KPMG	AIFMD report - kick off meeting	YES
34	3837	E1	27/09/2017	KPMG	Discussion with KPMG on NPLs	YES
35	3732	B4/B3	27/09/2017	PWC	Courtesy meeting following the appointment of Nathalie de Basaldua as Director	YES
36	2795	B3	26/01/2017	PWC	Prise de contact	NO
37	2971	B3	07/03/2017	PWC	Meeting with PWC	YES
38	3162	B4	11/05/2017	PWC	Meeting in Brussels	YES
39	2163	C2	20/05/2016	PWC	Meeting	NO
40	2143	C4	19/05/2016	PWC	Visit	YES
41	2610	B	26/10/2016	FLEISHMAN-Hillard	Meeting - Congratulations & a meeting request CBCR	YES
42	3041	C	22/03/2017	FLEISHMAN-Hillard	BATS Europe CEO Meeting request	YES
43	2708	C2	31/05/2017	FLEISHMAN-Hillard	REFUSED TOTALLY Pension funds in the EMIR review	YES
44	2710	C2	01/12/2016	FLEISHMAN-Hillard	Meeting with a joint delegation from the Coalition for Derivatives End Users and Deutsches Aktieninstitut	YES
45	2477	C3	42640	FLEISHMAN-Hillard	Meeting with BATS Europe	NO
46	3043	C3	28/03/2017	FLEISHMAN-Hillard	Meeting with Quantlab Europe, Hudson River Trading europe and flow Traders B.V.	YES
47	2584	C3	20/10/2016	FLEISHMAN-Hillard	Meeting with manager of the markets Team at The Investment Association	YES
48	3437	D2	29/06/2017	FLEISHMAN-Hillard	Covered bonds- European Datawarehouse	YES
49	3125	D3	18/04/2017	FLEISHMAN-Hillard	Meeting with Apple Pay	YES
50	4777	E1	43087	FLEISHMAN-Hillard	Meeting	YES
51	2559	E3	TBD	FLEISHMAN-Hillard	Macroprudential roundtable	YES
52	1847	E4	15/01/2016	FLEISHMAN-Hillard	Meeting with the CEO of TriOptima Group on CCPs	YES

53	4341	01	26/10/2017	FTI	Invitation to Roundtable discussion on the ESFS review (on ESAs)	YES
54	4178	C	19/10/2017	FTI	Meeting request Citadel	YES
55	1974	C	17/03/2016	FTI	CMU, Aset Management, CRD AIFMD/Ucits	YES
56	2266	C	23/06/2016	FTI	Meeting with Citadel	YES
57	2564	C	19/10/2016	FTI	Schroders Meeting	YES
58	2209	C	01/06/2016	FTI	Meeting with BNY Mellon via FTI consulting	YES
59	3281	C	02/06/2017	FTI	Meeting with Schroders via FTI Consulting	YES
60	2432	C2	08/09/2016	FTI	Meeting with Citadel	YES
61	3452	C2	25/04/2017	FTI	Meeting with BNY Mellon	YES
62	3271	C2	20/06/2017	FTI	Meeting with Citadel and FTI Consulting	YES
63	2788	C3	25/01/2017	FTI	Meeting with Citadel	YES
64	2329	C3	22/06/2016	FTI	Meeting with Citadel	YES
65	3272	C3	20/06/2017	FTI	Meeting with Citadel	YES
66	3273	C3	42893	FTI	Meeking with Vanguard	YES
67	2720	C4	42706	FTI	Meeting FTI Consulting	NO
68	3301	C4	06/06/2017	FTI	Meeking with Vanguard	YES
69	2741	C4	15/12/2016	FTI	Meeting FTI Consulting	YES
70	2793	C4	26/01/2017	FTI	Meeting with Managed Funds Association	YES
71	3053	C4	30/03/2017	FTI	Meeting to discuss UCITS, AIFMD, Cross-border passports, Equivalence	YES
72	2192	C4	42515	FTI	Meeting with Schroders and FTI consulting	NO
73	3300	D1	23/06/2017	FTI	Meeting Natixis/BPCE about Banking package	YES
74	1934	D1	25/02/2016	FTI	Meeting with Schroders Asset management	YES
75	2825	D1	26/01/2017	FTI	Meeting MFA - Managed Funds Association	YES
76	3101	D2	24/04/2017	FTI	Meeting with Schroders	YES
77	4553	D3	16/11/2017	FTI	Meeting with Master Card	YES
78	4850	D4	18/01/2018	FTI	Meeting request from Mastercard to discuss the interpretation of Article 24 of IDD (cross-selling)	YES
79	2728	C2	42712	FTI	Meeting with Citadel	NO
80	3335	DDG	14/06/2017	FTI	Meeting with BNY Mellon	YES
81	3232	DDG	18/05/2017	FTI	Meeting with IG's CEO	YES
82	2174	DDG	18/05/2016	FTI	Meeting at Schroders Asset management	YES
83	4276	DG	21/11/2017	FTI	Meeting with IG Group	YES
84	1872	E3	11/02/2016	FTI	Meeting with BNY Mellon - EMEA	YES
85	2164	01	28/04/2016	Hill & Knowlton	Meeting with Trafigura	YES