



## EUROPEAN COMMISSION

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

Director General

Brussels, **17 DEC. 2018**  
FISMA/C3/TL/psc – (2018) 6579949

Mr Georgios VASSALOS  
Université de Strasbourg  
Rue des Moissonneurs 64  
B – 1040 Bruxelles

**By registered letter with  
acknowledgment of receipt**

Advance copy by email: [ask+request-5701-0084cc4e@asktheeu.org](mailto:ask+request-5701-0084cc4e@asktheeu.org)

**Subject: Your request for access to documents with reference Gestdem  
2018/3568**

Dear Mr Vassalos,

We refer to your e-mail dated 3 July 2018 in which you make a request for access to documents, registered under the above-mentioned reference number.

You request access to *all correspondence (including emails) and meeting records of:*

- Jonathan Faull, Director General of DG MARKT and DG FISMA (2010-2015)
- Olivier Guersent, Head of Commissioner's Barnier cabinet (2010-2014), Deputy Director General of DG MARKT and DG FISMA (2014-2015) and General Director (2016-2017)
- Felicia Stanescu, assistant to J. Faull then O. Guersent
- Elemer Tertak, adviser to J. Faull
- John Berrigan, Deputy Director General of DG FISMA (2016-2017)
- Matthew Baldwin, Head of Commissioner's Hill cabinet then (2014-2016)
- Lee Foulger, member of Commissioners' Hill and Dombrovskis cabinets (2014-2016)
- Mette Grolleman, member of Commissioners' Hill and Dombrovskis cabinets (2014-2016)
- Jan Ceyssens, member of Commissioner's Dombrovskis cabinet (2014-2017)
- Martin Merlin, Director C (2015-2016)
- Ugo Bassi, Director C (2016-2017)
- Niall Bohan, Head of Unit G1

- *Partick Pearson, Head of Unit G2*
- *Maria Teresa Fabregas Fernandez, Deputy and then Head of Unit C2*
- *Tilman Lueder, Head of Unit C4 then C3*
- *Sven Gentner, Head of Unit C4*
- *Philip Tod, deputy and then acting head of unit G1 (2014-2015)*
- *Jennifer Roberston, deputy head of unit C2*
- *Jung-Dux Lichtenberger, deputy head of unit C1*
- *Ulf Linder, deputy head of unit C4*
- *Tatyana Panova, deputy head of unit C3*
- *Andrea Beltramello, policy officer (2015-2016), then Deputy Head of Unit (2017) at DG FISMA*
- *Sébastien Bagot, policy officer*
- *Sabine Schönangerer, policy officer*
- *Tommy De Temmerman, policy officer*
- *Valeria Miceli, policy officer*

*and Industry, Associations, Trade Unions and Academics on all issues concerning MiFID/MiFIR II between June 2014 and December 2017.*

Due to the very large number of documents concerned by your request, DG FISMA proposed on 24 July 2018, that your request will be handled as follows: deadline to reply to your request be postponed to end November 2018. Indeed your request required the competent unit to invest a significant amount of resources to deal with it, in addition to its regular workload. Please accept our apologies for the additional time taken in answering your request.

We have identified 233 documents as falling under the scope of your request. You will find two lists attached.

96 minutes of meetings have been elaborated. You will receive full access to 8 minutes of meetings (table 1: documents 1-2, 4-5, 7-10) and a partial access to the other 88 minutes of meetings. Some parts were redacted in order to protect the personal data of individuals; others were deleted for being out of the scope of your request.

Regarding the minutes or summary records of meetings with external parties, these documents were drawn up for internal use under the responsibility of the relevant services of DG FISMA. They solely reflect the services' interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which was not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

We have identified 137 exchanges of correspondence. You will receive full access to 7 letters (table 2: documents 16, 43, 77, 93, 99, 133 and 134), partial access to 118 letters and a negative answer to the disclosure of 12 documents (table 2: documents 1, 22, 24, 57, 71, 73, 78, 111, 118, 122, 123 and 127).

Please note that we have consulted all third parties originators of the letters addressed to our Directorate-General and we have taken into consideration their observations in our answer.

As regards documents from third parties, please also note that these documents were received by the Commission. These documents are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on it. They do not reflect the position of the Commission and cannot be quoted as doing so.

### **Protection of personal data**

Some of the documents (see above and in the table enclosed identification of the documents) to which you have requested access contain personal data, in particular: names, contact details, hand-written signatures.

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 European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EC) No 2018/1725<sup>1</sup> of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('Regulation 2018/1725').

Pursuant to Article 9(1)(b) of Regulation 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

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<sup>1</sup> Official Journal L 205 of 21.11.2018, p. 39.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and 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 removing this personal data.

### **Protection of commercial interests**

Article 4(2) first indent of Regulation No. 1049/2001 stipulates 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, unless there is an overriding public interest in disclosure. "*

Use of the exception under Article 4(2), first indent, of Regulation (EC) No 1049/2001 on the grounds of protecting commercial interests is justified with respect to the entirety or parts of the documents mentioned accordingly above and in the attached list.

The undisclosed parts of those documents relate to elaboration of financial parameters. A disclosure of the above mentioned documents would allow the instructed public to gather important information of business relevance, which would be harmful for the organisations concerned.

In examining your request, the possibility of granting partial access to the fully refused documents (table 2, as regards 12 documents: 1, 22, 24, 57, 71, 73, 78, 111, 118, 122, 123 and 127) has been taken into consideration. However, it turned out that, after consultation of third parties and examination of the documents, these documents are covered in their entirety by the exception above mentioned, so that the release of parts of the documents cannot be envisaged.

The exception laid down in Article (4) 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 access to documents 1, 22, 24, 57, 71, 73, 78, 111, 118, 122, 123 and 127, based on the exception of Article 4(2), of Regulation 1049/2001 and grant partial access to the other documents above mentioned.

In case you would disagree with the above assessment, 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.

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.C1  
BERL 5/282  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Olivier GUERSENT

Encl.: lists of identified documents