



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Director-General

Brussels, 24. 05. 2019
Taxud E2/SVDV – taxud.e.2(2019)2775527

Mrs Laura Kayali
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Rue de la Loi 62
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(by e-mail and registered mail)

Dear Mrs Kayali,

Subject: Your applications for access to documents – Ref GestDem No 2019/1316 and 2019/1433

We refer to your e-mails dated 8 and 12 March 2019, in which you make a request for access to documents, registered under the above-mentioned reference numbers as follows:

- 1) Gestdem no 2019/1316: Amazon
- 2) Gestdem no 2019/1433: Microsoft

For both files, you request access to:

“For the period between November 2014 and March 2019:

- List of lobby meetings held with your DG, with Amazon/Microsoft or its intermediaries. The list should include: date, individuals attending + organisational affiliation, the issues discussed*
- Minutes and other reports of these meetings*
- All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between your DG (including the Commissioner and the Cabinet) and Amazon or any intermediaries representing its interests*
- All documents prepared for the meetings and exchanged in the course of the meetings between both parties.”*

The Secretariat-General proposed a fair solution with letter of 26/03/2019 (Ref. Ares(2019)2103981), including a list of all high level meetings with the Commissioner, the members of his Cabinet and the Director-General, which you unfortunately did not accept. Based on this list,

DG TAXUD continued with the identification of the lobby meetings¹ with Amazon and Microsoft, and existing documents related to these meetings.

The **list** with meetings and documents identified are in **annex** to this letter.

1) Gestdem no 2019/1316: Amazon

Your application has been dealt with in accordance with Regulation 1049/2001 on public access to Commission documents. The third party (Amazon) has been consulted because a document originates from them and personal data of their representatives is mentioned in the Commission documents. Amazon explicitly invoked Article 4(1) (b) of Regulation (EC) No 1049/2001, as regards the protection of personal data.

Following from Regulation (EC) No 1049/2001 and based on the abovementioned consultation with Amazon, I have come to the conclusion that the documents may be partially disclosed.

Doc 1, 2, 3 and 5 (Commission documents)

Some parts in *doc 1 and 2* have been redacted, because they concern specific references to other companies, which are in fact out of scope of your request. Disclosing these company names in the context of digital economy taxation may be sensitive and have a negative impact on the commercial interests of these companies and on the international relations with the countries where these multinational companies are located.

Some parts in *doc 5* have been redacted, because they cover an assumption on the CCCTB that may be misinterpreted and some critical points relating another topic linked to a Member State.

Therefore, access to these parts of the documents cannot be granted in accordance with the exceptions laid down in:

- the third indent of Article 4 (1) (a) of Regulation 1049/2001 which stipulates *that "The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards (...) international relations"*;
- the first indent of Article 4 (2) of Regulation 1049/2001, which stipulates that *"the institutions shall refuse access to a document where disclosure would undermine the protection of the commercial interests of a natural or legal person, including intellectual property, (...) unless there is an overriding public interest in disclosure"*.

Please note further that there is no overriding public interest in disclosure of these parts of the documents which would outweigh the harm disclosure would cause to the interests protected by the invoked exception. It is considered that this risk is foreseeable and not purely hypothetical.

Doc 4 (Document Amazon)

This document is an e-mail from an Amazon representative, which contains personal data.

¹ The definition of what a lobbying meeting is can be found in Article 2 of the Commission decision on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals (2014/838/EU, Euratom) and the Commission decision on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals (2014/839/EU, Euratom).

2) Gestdem no 2019/1433: Microsoft

We regret to inform you that DG Taxation and Customs Union did not hold lobby meetings² with Microsoft and does not hold documents that would correspond to the description given in your application.

As specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application, are held by DG Taxation and Customs Union, we are not in a position to handle your request.

Personal data

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 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 the 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'.

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 identified, which all contain personal data of either Commission officials (names, acronyms) or of Amazon representatives (names, function, cv's), expunged from these personal data.

Confirmatory

In case you would disagree with the overall assessment of the documents or 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.

² See footnote 1 for the definition of what a lobbying meeting is.

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, Document Management & Access to Documents (SG.C.1)
BERL 5/282
B-1049 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Stephen Quest', written in a cursive style.

Stephen Quest

Annex: list of lobby meetings