



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

Director General

Brussels, 25 February 2021

FISMA/B4/GSV/av
fisma.b.4(2021)1577946

Ms Pia Eberhardt
Corporate Europe Observatory (CEO)
Rue d'Edimbourg 26
1050 Brussels
Belgium

***By registered letter with acknowledgment
of receipt***

Advance copy by email:
[ask+request-7685-
4c1b1547@asktheeu.org](mailto:ask+request-7685-4c1b1547@asktheeu.org)

Subject: Your request for access to documents (ref GESTDEM 2020/7947)

Dear Ms Eberhardt,

Thank you for your e-mail of 22 December 2020, requesting access to documents under Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Your request is as follows:

“Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

1) a list of all lobby meetings (including online meetings) held by DG FISMA since 20 February 2020, in which intra-EU investment protection and facilitation (after the termination of EU member states' intra-EU investment treaties) has been discussed. The list should include: date, Commission attendees, the name of the organisation(s) attending, and a more precise topic if that exists;

2) minutes and other notes from these meetings;

3) all correspondence between DG FISMA and lobby groups, in which intra-EU investment protection and facilitation (after the termination of EU member states' intra-

EU investment treaties) has been discussed (since 20 February 2020). Please note that I am aware that the Commission has published the contributions to the consultation on the issue (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12403-Investment-protection-and-facilitation-framework/public-consultation>), so this part of my request does not refer to these published contributions.”

After a search, thirteen documents have been identified as falling within the scope of the scope of your application (see references below¹), one of which is publicly available.

Having examined the documents requested which are not public under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that we cannot give access to one document (exchange of emails with a private organization) as it contains sensitive commercial interests of legal person (see point 1 below); and eleven documents may be only partially disclosed as they contain personal data, in particular names and contact details (see point 2 below).

1) Denied access to document Ares(2020)6082388

It appears from our examination that document Ares(2020)6082388 falls within the category of exceptions to disclosure provided for in Article 4(2), first indent, of Regulation No 1049/2001.

Since the document Ares(2020)6082388 originates from a third party, the originator of the document has been consulted.

Following an examination of document Ares(2020)6082388 under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third party, I regret to inform you that your application cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4(2) first indent of this Regulation.

The document Ares(2020)6082388 which you seek to obtain contains commercially sensitive business information of the company that submitted it. The author of the document Ares(2020)6082388 has objected to disclosure of the document that it sent to the Commission.

We have considered whether partial access could be granted to the document Ares(2020)6082388 requested. However, the document is entirely covered by the exception to the right of access.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the document. We examined whether there could be an overriding public interest in disclosure, but we have not been able to identify such an interest.

2) Partial disclosure of eleven documents

¹ References: Ares(2021)889220; Ares(2021)863706; Ares(2020)3340916; Ares(2021)942780; Ares(2020)6157524; Ares(2020)6157524; Ares(2020)2797752; Ares(2020)2797752; Ares(2020)6862237; Ares(2021)942800; Ares(2021)863564; Ares(2020)1608981; Ares(2020)6082388.

Having examined the eleven documents (see reference below²) requested which are not public under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that they may be only partially disclosed as they contain personal data, in particular names and contact details. Therefore, some parts of the documents have been blanked out and their disclosure is prevented by exception to the right of access laid down in Article 4 of this Regulation, for data protection reasons.

Personal data can only be transmitted under specific exceptional conditions, including if *'the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest.* According to Article 9(1)(b) of Regulation 2018/1725, the European Commission also only has to examine the further conditions for a lawful processing of personal data if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Should you disagree with the assessment to deny access to one document request and/or that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to submit a confirmatory application requesting the Commission to review this position.

² References: Ares(2021)889220; Ares(2021)863706; Ares(2020)3340916; Ares(2021)942780; Ares(2020)6157524; Ares(2020)6157524; Ares(2020)2797752; Ares(2020)6862237; Ares(2021)942800; Ares(2021)863564; Ares(2020)1608981.

The Secretary-General will inform you of the result of his review within 15 working days of receipt of your request, and will either grant you access to the document or confirm the refusal. In the latter event, the Secretary-General will indicate what avenues of appeal are open to you.

Any correspondence should be sent to the following address:

European Commission
Secretariat-General
Transparency, Document Management and Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Electronically signed

John BERRIGAN

Enclosure: 11 documents partially redacted: Ares(2021)889220; Ares(2021)863706;
Ares(2020)3340916; Ares(2021)942780; Ares(2020)6157524;
Ares(2020)6157524; Ares(2020)2797752; Ares(2020)6862237;
Ares(2021)942800; Ares(2021)863564; Ares(2020)1608981.
1 document publicly available: Ares(2020)2797752