



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Acting Director-General

Brussels,
TAXUD.E2/Svdv – taxud.e.2(2020)4523863

Mrs Melissa Heikkilä
POLITICO
Rue de la Loi 62
BE - 1040 Brussels

@ .

(by e-mail and registered mail)

Dear Mrs Heikkilä,

Subject: Your application for access to documents – Ref GestDem No 2020/3941

We refer to your e-mail dated 29 June 2020, in which you make a request for access to documents, registered under the above-mentioned reference number. The request has been split between DG TRADE (request 2020/3942) and DG TAXUD (request 2020/3941). The current reply covers the latter request.

You request access to the following documents:

“All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, and minutes/notes) relating to the meetings listed below, up to the current date of 29 June May 2020.

- 1. 24/01/2020 between Commissioner Paolo Gentiloni and Facebook Ireland Limited*
- 2. 23/01/2020 between Commissioner Paolo Gentiloni and Booking.com B.V.*
- 3. 23/01/2020 between Commissioners Paolo Gentiloni and Apple Inc.*

The documents are grouped per meeting. Be informed that for these meetings no minutes are available. A general briefing was prepared for the meetings held in Davos with these technology companies. The **list** with documents identified are in **annex** to this letter.

Your application has been dealt with in accordance with Regulation 1049/2001 on public access to Commission documents. The third parties (Facebook, Booking.com and Apple) were consulted as concerns the e-mails and letters originating from them. In particular, they have been consulted because personal data of their representatives and staff is mentioned in these documents.

1) Meeting with Facebook Ireland Ltd on 24/01/2020

Doc 1 – e-mail 16/1/2020: meeting with representatives of Facebook.

Following from Regulation (EC) No 1049/2001 and based on the consultation with Facebook, we have come to the conclusion that the document may be disclosed. Some references to persons' names and other personal data have been redacted (see below under *Personal data*).

2) Meeting with Booking.com BV on 23/01/2020

Doc 2 – e-mail dated 19/12/2020: meeting with representatives of Booking.com

Doc 3 – letter of Booking.com dated 18/12/2020

Following from Regulation (EC) No 1049/2001 and based on the consultation with Booking.com, we have come to the conclusion that the documents may be disclosed. Some references to persons' names and other personal data have been redacted (see below under *Personal data*).

3) Meeting with Apple Inc. on 23/01/2020

Doc 4 – e-mail dated 13/12/2020: meeting with representatives of Apple Inc.

Doc 5 – letter of Apple Inc. dated 6/2/2020

Doc 6 – Letter of Commissioner Gentiloni dated 17/2/2020

Following from Regulation (EC) No 1049/2001 and based on the consultation with Apple Inc, we have come to the conclusion that the document may be partially disclosed.

Apple Inc. did not object to the disclosure of the e-mail and the letter relating to the meeting with the Apple Inc. representatives, provided that indications about the travel schedule of the CEO were redacted in accordance with Article 4(1) (b) of Regulation (EC) No 1049/2001. All personally identifiable data have been redacted (see below under *Personal data*)

4) Doc 7 – Briefing for meetings with tech companies

Following from Regulation (EC) No 1049/2001, we have come to the conclusion that the document may be partially disclosed.

Please, note that the briefing also covers information of companies that are not within the scope of the three meetings mentioned in your request.

Some parts in *doc 7* have been redacted, because the Commission considers that they concern confidential information:

- The information on page 10 includes preliminary assessments of companies' (also companies not covered by your request) global profits as regards the impact of Digital Services Taxes. Disclosing this information 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.

- The information on pages 12-13 concerns background information about the negotiations in the OECD. Digital taxation is a delicate matter that touches upon the tax legislation of the Member States. Disclosure would be potentially harmful for the public interest as regards international relations, because negotiations are currently ongoing at international level in the OECD framework, which aims to achieve a global solution. Moreover, it may not only have an impact on the tax policy of Member States, but also on large companies with activities across the EU. In addition, disclosure of the positions of Member States would undermine the ongoing decision-making process.

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"*.
- Article 4 (3), first subparagraph of Regulation 1049/2001, which stipulates that *"Access to a document, drawn up by an institution 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"*.

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 exceptions. It is considered that this risk is foreseeable and not purely hypothetical.

Personal data

The *documents 1 to 6* to which you are granted access contain personal data.

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 *documents 1 to 6* expunged from these personal data (Commission/company staff names and functions, handwritten signatures, telephone numbers and office addresses)

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'.

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.

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
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/067
B-1049 Brussels

or by email to: sg-xxxxxxx@xx.xxxxxx.xx

Yours faithfully,

Benjamin ANGEL

Annexes: as stated above