



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
CLIMATE ACTION
Directorate A – Strategy, Analysis and Planning
CLIMA.A.1 – Strategic Coordination, Legal & Institutional

Brussels
CLIMA.A.1/A1

Ms Pia EBERHARDT
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Rue d'Edimbourg 26
B – 1050 Brussels

By email to: ask+request-11842-550d019b@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2022/5530

Dear Ms Eberhardt,

We refer to your e-mail of 20 September 2022 in which you make a request for access to documents, registered on 21 September 2022 under the above-mentioned reference number.

You requested access to the following documents:

- 1) *all correspondence (including email, SMS, private twitter and WhatsApp) since 1st January 2022 between Commissioner Timmermans, and/or his cabinet and/or officials from DG CLIMA with representatives of German companies and associations, in which the issue of hydrogen was discussed. Companies and associations I am particularly interested in are: Uniper, E.ON, RWE, Linde, Siemens (Energy), Thyssengas, Thiiga, Vattenfall (Germany), Wintershal Dea, Open Grid Europe, EnBW, MAN Energy Solutions, Fluxys Deutschland, Shell (Deutschland), Gascade, Ontras, ThyssenKrupp, Bundesverband der Energie- und Wasserwirtschaft (BDEW), Zukunft Gas, DVGW (Deutscher Verein des Gas- und Wasserfachs), DENA (Deutsche Energieagentur), BDI (Bundesverband der deutschen Industrie), BDA (Bundesverband der dt. Arbeitgeberverbände) and DIHK (Deutscher Industrie- und Handelskammertag);*

- 2) *any briefings prepared for Commissioner Timmermans, and/or his cabinet and/or officials from DG CLIMA for meetings since 1st January 2022 with representatives from the above mentioned companies and associations, in which the issue of hydrogen was discussed;*
- 3) *list of meetings since 1st January 2022 between Timmermans, and/or his cabinet and/or officials from DG CLIMA with representatives from the above mentioned companies and associations, in which the issue of hydrogen was discussed.*
- 4) *minutes of the meetings mentioned above.*

Your application concerns the following documents:

1. Ares(2022)3460591 – Email from RWE dated 4 May 2022
2. Ares(2022)3460591 – Letter from RWE dated 4 May 2022.

Please note that since documents originate from a third party, the originator of the documents has been consulted pursuant to Article 4(4) of Regulation (EC) No 1049/2001.

Following an examination of the identified documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that a complete disclosure of the documents 1,3 and 5 is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain: names and contact information of Commission staff members not pertaining to the senior management; names and contact details of other natural persons and other information relating to an identified or identifiable natural person.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the above-mentioned documents, 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.

Regarding point 3) of your request, please note that the list of meetings with organisations and self-employed individuals of the Commissioner, the members of his Cabinet and the Director-General of Directorate-General for Climate Action is available in the links enclosed below:

- <https://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=f1afd532-0d40-4dcd-8e45-667b57075377>
- <https://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=ec1ecb7e-2615-44eb-895b-6b08637c2a0d>
- <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=d41e42be-7ff1-4635-bb4f-e47d38f886ed>

As regards the list of meetings of the staff of the Directorate-General for Climate Action, please note that the officials of the European Commission having the status of Director-General shall make public information on all meetings held by them with organisations or self-employed individuals on issues relating to policy-making and implementation in the Union in accordance with the Commission Decision 2104/838/EU, Euratom of 25 November 2014¹. However, the same obligation does not apply to lower-ranking officials, such as the remaining members of the Directorate-General for Climate Action.

The Court of Justice held that ‘the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and [...] Regulation No 1049/2001 may not be relied upon to oblige an institution to create a document which does not exist. It follows that, [...], an application for access that would require the Commission to create a new document, even if that document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001’².

In the present case, the Directorate-General for Climate Action does not hold any list of all meetings of its staff with the specific organisation concerned by your request in addition to the publicly available information on meetings of the Director-General, which is accessible via the abovementioned link. In this respect, I would like to confirm that compiling such a list in order to fulfil your request would equal to the creation of a new document, as neither can such a list be extracted from a database by means of a normal or routine search.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled 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 Secretariat-General of the Commission at the following address:

¹ OJ L 343, 28.11.2014, p. 19–21.

² Judgment of the Court of Justice of 11 January 2017, *Typke v European Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

European Commission
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BERL 7/076
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or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)

Luca DE CARLI