



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT
Directorate B - Investment, Innovative & Sustainable Transport
B.4 - Sustainable & Intelligent Transport

Brussels
MOVE.DDG1.B.4/KH

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Subject: Your application for access to documents – EASE Case 2023/0271

Dear Ms Bounfour,

We refer to your request for access to European Commission documents registered on 17 January 2023 under the above-mentioned reference number.

In your initial application, you requested access to the following documents:

- “1. A list of all meetings/ discussions that have taken place since September 1st 2021 between representatives of DG Move, including members of cabinet, and representatives of Fuels Europe.*
- 2. Any records, minutes or notes of these meetings/discussions.*
- 3. Any briefings prepared for these meetings.*
- 4. All correspondence exchanged since September 1st 2021 (including SMS & any other type of messages processed through phone apps - eg., WhatsApp, Signal, Telegram etc, recorded voice messages, emails, letters and attached documents) between representatives of DG Move, including members of cabinet, and representatives of Fuels Europe”.*

By our e-mail of 2 February 2023, we invited you, pursuant to Article 6(3) of Regulation (EC) No 1049/2001, to accept a proposal for a fair solution for dealing with your request. We suggested in our proposal to consider under the scope of your application only the documents relating to the topics “Euro VIP”, “CO2 regulation for light vehicles”, “CO2 regulation for heavy-duty vehicles”, “the Renewable Energy Directive (RED)”, “ReFuelEU Aviation”, “FuelEU Maritime”, or “AFIR directive”, as these were the topics in which you manifested interest in other requests for access to documents that you submitted to the Directorate-General for Mobility and Transport in the last few days. We further underlined that in the absence of a reply within five working days, we would have to unilaterally restrict the scope of your application to that suggested in that letter.

Given the absence of your reply to our proposal for a fair solution, we therefore consider your application as referring to documents covering the abovementioned topics.

We also consider your request to cover documents held up to the date of your initial application, i.e. 12 January 2023.

Having examined your request, as regards the requested list of meetings, we must first note that Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereinafter ‘Regulation (EC) No 1049/2001’) applies only to existing documents in the possession of the institution, in accordance with its Article 2(3) – that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union. We would like to refer in this respect to the judgment of the Court of Justice in Case C-127/13 P – *Strack v European Commission*, according to which ‘[n]either Article 11 of Regulation 1049/2001 nor the obligation of assistance in Article 6(2) thereof, can oblige an institution to create a document for which it has been asked to grant access but which does not exist’², and to the judgment of the Court in Case C-491/15 P – *Typke v European Commission*, where it 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 1049/2001’³.

In the present case, while the Directorate-General for Mobility and Transport keeps records of meetings of the Director-General, of the Commissioner and of the members of her Cabinet with organisations and self-employed individuals, which are publicly available on the transparency register website⁴, it does not hold any individual lists of meetings with the specific organisations concerned by your request in addition to the publicly available information on the transparency register. In this respect, we would like to underline that compiling lists of meetings in order to fulfil your request would equal to the creation of new documents within the meaning of the above-mentioned case-law, as such a list cannot be extracted from a database by means of a normal or routine search. We cannot therefore fulfil your request as regards the requested lists of meetings.

¹ OJ L 145, 31.5.2001, p. 43.

² Judgment of the Court of Justice of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 46.

³ Judgment of the Court of Justice of 11 January 2017, *Typke v European Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

⁴ The relevant links to the publicly available lists of meetings are as follows:

- For meetings of Commissioner Vălean with organisations and self-employed individuals: <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=76282059-61de-44b4-a0b9-729043afb1a2>
- For meetings of the members of the Cabinet of Commissioner Vălean with organisations and self-employed individuals: <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=d9a26c6a-8203-4852-b6f4-b3e71f38af90>
- For meetings of Director-General Henrik Hololei with organisations and self-employed individuals: <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=ed82401c-d412-44bd-bdbc-3d0c5d051337>

As regards the other documents concerned by your request, we have identified the following documents as falling within the scope of your application:

- **Annex 1:** E-mail exchange between representatives of Fuels Europe and DG MOVE officials with the subject matter “*Sharing Concawe’s assessment of Fit for 55*”, dated between 16 February and 2 March 2022;
- **Annex 2:** E-mail exchange between representatives of Fuels Europe and DG MOVE officials with the subject matter “*Meeting DG MOVE / FuelsEurope / Concawe on Concawe’s assessment of Fit for 55 - Slides and additional detailed information*”, dated between 14 April and 24 May 2022;
 - **Annex 2.1:** Slides from Fuels Europe with the key aspects / summary of Concawe’s modelling on the different packages, sent as an attachment to the e-mail of 14 April 2022;
- **Annex 3:** E-mail exchange between representatives of ExxonMobil, FuelsEurope and members of the Cabinet of Commissioner Vălean with the subject matter “*Thank you Call 23/03/2022 Exxon Fuels Europe 18 03 2022*”, dated between 17 and 18 March 2022;
- **Annex 4:** E-mail exchange between a representative of Fuels Europe and DG MOVE officials concerning a request for a call, dated 10 September 2022;
- **Annex 5:** Briefing for the virtual meeting between a representative of Fuels Europe and DG MOVE officials held on 11 October 2021;
- **Annex 6:** E-mail from a representative of Fuels Europe to DG MOVE officials on the opinion of the EESC concerning automotive ecosystem and the contribution of low-carbon fuels, dated 27 October 2021;
- **Annex 7:** Letter from DG MOVE to a representative of Fuels Europe concerning the Own Initiative Opinion on “Automotive Eco-systems”, dated 16 November 2021.

Concerning all documents listed above, we have come to the conclusion that they may be partially disclosed. A complete disclosure of the identified documents 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 regarding public access to European Parliament, Council and Commission documents ⁽⁵⁾ (hereinafter ‘Regulation (EC) No 1049/2001’), because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;

⁽⁵⁾ OJ L 145, 31.5.2001, p. 43.

- other information relating to identified or identifiable natural persons, in particular references to their functions, to the extent that these would enable their identification.

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 (EU) 2018/1725 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 ⁽⁶⁾ (hereinafter ‘Regulation (EU) 2018/1725’, or ‘Data Protection Regulation’).

In particular, Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data ⁽⁷⁾.

In its judgment in Case C-28/08 P (Bavarian Lager) ⁽⁸⁾, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable ⁽⁹⁾.

Pursuant to Article 9(1)(b) of Regulation (EU) 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’.

⁽⁶⁾ Regulation (EU) 2018/1725 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 (OJ L 205 of 21.11.2018, p. 39).

⁽⁷⁾ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

⁽⁸⁾ Judgment of 29 June 2010 in Case C-28/08 P, *Commission v Bavarian Lager*, ECLI:EU:C:2010:378, paragraph 63.

⁽⁹⁾ Whereas this judgment specifically related to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, the principles set out therein are also applicable under the new data protection regime established by Regulation (EU) 2018/1725.

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

According to Article 9(1)(b) of the Regulation (EU) 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.

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. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

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 these documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

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 requested 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 the disclosure of their personal data.

Please note that the documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Please also note that the disclosed briefing was drawn up for internal use under the responsibility of the relevant officials of the Directorate-General for Mobility and Transport. It solely reflects the author's interpretations of the interventions made and does not set out any official position of the third parties to which the document refers, which were not consulted on their content. They also do not reflect the position of the Commission and cannot be quoted as such.

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

by asking for a review via your portal ⁽¹⁰⁾ account (available only for initial requests submitted via the portal account),

or by mail:

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

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

Yours sincerely,

Kristian HEDBERG
Head of Unit

Enclosure: 8 annexes

⁽¹⁰⁾ <https://www.ec.europa.eu/transparency/documents-request>