



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
CLIMATE ACTION

The Director General

Brussels,

By registered letter with acknowledgment of receipt

Neil Roberts
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69 London Rd,
TW1 3SP
United Kingdom

Advance copy by email: ask+request-7212-2de667ae@asktheeu.org

Subject: Your application for access to documents – GestDem 2019/4865

Dear Mr. Roberts,

We refer to your e-mail dated 19 August in which you make a request for access to documents, registered on the same day under the above-mentioned reference number.

The scope of the request concerns all documents received by DG CLIMA including communications and presentations from lobby groups and/or member states on the subject of a European carbon border tax in the 24 months before the day of the application.

We have identified the following documents corresponding with your request:

	Author	Format	Date	Subject/Reference
1	Fertilizers Europe	Email	23 July 2019	Ares(2019)5998460
2	Fertilizers Europe	Letter attached	23 July 2019	Ares(2019)5998460
3	Eesti Energia	Email	12 June 2019	Ares(2019)3755968
4	Eesti Energia	Letter attached	12 June 2019	Ares(2019)3755968
5	Stakeholder	Email	5 August 2019	CHAP(2019)02233/A/001
6	Stakeholder	Letter attached	5 August 2019	CHAP(2019)02233/A/001
7	Stakeholder	Letter	1 August 2019	CHAP(2019)02334/A/001

Please find enclosed the documents 1-4, with some parts redacted. The Commission has received those documents from third parties, and in accordance with Article 4(4) of Regulation (EC) 1049/2001, it has consulted those third parties on the disclosure.

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/EC¹ ('Regulation 2018/1725').

The documents 1-4, to which you request access, contain personal data, in particular names and positions.

Indeed, Article 3(1) of Regulation 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.²

Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.³

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵.

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 '[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'.

¹ Official Journal L 205 of 21.11.2018, p. 39.

² 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*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

³ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

⁴ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

⁵ 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 2018/1725.

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

According to Article 9(1)(b) of Regulation 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 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 the 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 among other risks.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 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.

Furthermore, some parts of document 4 contain information that could negatively influence the commercial interests of certain companies. Therefore, the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to this document.

Consequently, document 4 has been redacted considering the exceptions established in Article 4(1)(b) and Article 4(2) first indent of the Regulation (EC) No 1049/2001.

As regards documents 5-7, these relate to the same complaint presented by a stakeholder to the European Commission about a measure, absence of a measure or practice by an EU Member State. This complaint is currently being assessed to determine whether there has been a breach of EU law. Disclosure of these documents would undermine the protection of this investigation and, therefore, the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies entirely to documents 5-7.

The exceptions laid down in Article 4(2), first indent (protection of commercial interests) and third indent (protection of the purpose of investigations) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

According to settled case-law, it is for the applicant to put forward concrete elements to demonstrate the existence of an overriding public interest in the disclosure of the requested documents⁶.

⁶ Judgment of the Court of Justice of 29 June 2010, *Commission v Technische Glaswerke Ilmenau* (hereafter referred to as '*Commission v TGI* judgment'), C-139/07 P, EU:C:2010:376, paragraph 62, Judgment of the Court of Justice of 28 June 2012, *European Commission v Agrofert Holding*, C-477/10 P, EU:C:2012:394, paragraph 68; Judgment of the Court of Justice of 14 November 2013,

You have not put forward any arguments to demonstrate the existence of an overriding public interest in disclosure. Nor have we been able to identify any public interest capable of overriding the private interest protected by Article 4(2), first and third indent of Regulation (EC) No 1049/2001.

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:

European Commission
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076

B-1049 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Mauro PETRICCIONE
Director General

LPN and Finland v European Commission, Joint Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraphs 92 to 94; *Falcon Technologies v European Commission* judgment, cited above, paragraph 84.