



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
CLIMATE ACTION
The Director General

Brussels,

By registered letter with acknowledgment of receipt

Jake Carbone,
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London, J4Y 0B5
United Kingdom

Advance copy by email: ask+request-7385-3bb16d12@asktheeu.org

Subject: Your application for access to documents – GestDem 2019/5913

Dear Mr. Carbone,

We refer to your e-mail dated 18 October 2019 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number.

You request access to “*All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, and minutes/notes) relating to the meetings listed below:*”

- *Between Gas Infrastructure Europe (GIE) and Commissioner Miguel Arias Cañete on the 19/09/2019.*
- *Between AIR LIQUIDE and Commissioner Miguel Arias Cañete on the 05/09/2019.*
- *Between Shell Companies (Shell) and Commissioner Miguel Arias Cañete on the 09/07/2019.*
- *Between ENEL SpA, Federturismo Confindustria - Federazione Nazionale dei Viaggi e del Turismo, Snam S.p.A. (SNAM), Eni S.p.A., Cassa Depositi e Prestiti s.p.a. (CDP), Edison Spa (EDS), Tractebel Engineering - ENGIE (TE) and Commissioner Miguel Arias Cañete on the 06/06/2019.”*

We have identified the following documents:

	Format	Author	Date	Subject/Reference
1	E-mail	Gas Infrastructure	30 August	Ares(2019)5486901

		Europe	2019	
2	E-mail	AIR LIQUIDE	28 August 2019	Ares(2019)5441595
3	E-mail	AIR LIQUIDE	18 September 2019	Ares(2019)5826781
4	Letter	Shell	24 April 2019	Ares(2019)2779747

Please note that the Commission has received the requested documents from third parties. In accordance with Article 4(4) of Regulation (EC) 1049/2001, my service has consulted those third parties concerning the disclosure of the requested documents emanating from them.

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 to which you request access contain personal data, in particular names, functions and signatures.

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.

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](#).

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’.

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 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, 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.

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.

In case you would disagree with the assessment 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 (EC) No 1049/2001, to submit 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 faithfully,



Luca DE CARLI

Head of Unit