



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Director-General

Brussels,
ENER/B2/El/el D(2020) 1410029

Mrs Belen Balanya
CEO
Rue d'Edimbourg 26
1050 Brussels

by registered mail and by email:
[ask+request-7528-
1e5107c3@asktheeu.org](mailto:ask+request-7528-1e5107c3@asktheeu.org)

Subject: Your application for access to documents – Ref GestDem 2020/7349

Dear Mrs Balanya,

We refer to your email, dated 19 December 2019 in which you make a request for access to documents, registered under the above-mentioned reference number.

You request access to:

1- all correspondence (including email) between 1st January 2018 and 19 December 2019 between the Commissioner for Energy and/or his cabinet and/or officials and representatives of DG Energy on the one hand and representatives from CEFIC, Hydrogen Europe and FTI Consulting on the other, in which the gas market reform was addressed;

2 - list of meetings between 1st January 2018 and 19 December 2019 between officials and representatives of DG Energy on the one hand and representatives from CEFIC, Hydrogen Europe and FTI Consulting on the other, in which the gas market reform was addressed;

3 - minutes of the meetings mentioned above.

Following our research, we found one document corresponding to your request under point 1:

- Paper “Hydrogen Europe’s Vision on the role of hydrogen and gas infrastructure on the road towards a climate neutral economy” from Hydrogen Europe and its covering email from Hydrogen Europe of 24 April 2019.

I am glad that this document can be disclosed, subject only to the redaction of personal data, for the following reasons:

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 ('Regulation 2018/1725').

One of the documents to which you request access contains personal data, in particular names, email addresses and phone numbers of the third parties.

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.

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹, 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.²

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.

¹ 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.

² 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.

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 document, 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, 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.

Please find enclosed the redacted copy of the document in question.

Concerning point 2 of your request "list of meetings", as we have already informed you, the Commission does not hold such lists of meetings for officials below Director-General level. Notwithstanding, information on the meetings with the participation of the Commissioner or his Cabinet, or our Director-General is available in the public domain:

https://ec.europa.eu/commission/commissioners/2019-2024/simson_en#calendar

<http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=61569260-525e-42f8-aa52-51d7bfc30d4f>

In relation to point 3 of your request, we regret to inform you that no documents were found that would correspond to the description given in your application.

Indeed, as specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

In case you would disagree with this assessment, 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 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

[e-signed]
Ditte Juul Jørgensen

Enclosures: 2