



EUROPEAN COMMISSION

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2020/4243**

Dear Ms Balanya,

I refer to your letter of 24 September 2020, registered on 25 September 2020, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation (EC) No 1049/2001').

Please accept our apologies for this late reply.

1. SCOPE OF YOUR REQUEST

In your initial application of 12 July 2020, addressed to the Secretariat-General of the European Commission, you requested access to, I quote:

- 'all correspondence (including email) between 1 December 2019 and 12 July 2020 between Commissioner Simson, Commissioner Timmermans, Commissioner Breton, President van der Leyen, and/or their cabinets and/or officials from the European Commission on one hand and representatives from IOGP, Shell, Total, BP, Equinor, ZEP, the Global CCS Institute, Hydrogen Europe, the Hydrogen Council, Business Europe, the European Roundtable for Industry, GasNaturally, Eurogás, ENTSO-G, Snam, Enagás, Fluxys, Open Grid

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L 145, 31.5.2001, p. 43.

Europe, GRTGaz, Teréga, Eurofer, ArcelorMittal, FTI Consulting, Fleishman Hillard, Alstom, Engie, Air Liquide, Toyota, Gas for Climate consortium, Gas Infrastructure Europe on the other, in which the Hydrogen strategy was addressed;

- list of meetings between 1 December 2019 and 12 July 2020 between officials and representatives of the European Commission on one hand and representatives from IOGP, Shell, Total, BP, Equinor, ZEP, the Global CCS Institute, Hydrogen Europe, the Hydrogen Council, Business Europe, the European Roundtable for Industry, GasNaturally, Eurogás, ENTSO-G, Snam, Enagás, Fluxys, Open Grid Europe, GRTGaz, Teréga, Eurofer, ArcelorMittal, FTI Consulting, Fleishman Hillard, Alstom, Engie, Air Liquide, Toyota, Gas for Climate consortium, Gas Infrastructure Europe on the other, in which the the Hydrogen strategy was addressed;
- minutes of the meetings mentioned above'.

The documents relating to these meetings and correspondence are held by various Directorates-General of the European Commission and therefore your application was split between the Secretariat-General of the European Commission (Gestdem 2020/4243), the Directorate-General for Energy (Gestdem 2020/4244), the Directorate-Genetral for Climate Action (Gestdem 2020/4245) and the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (Gestdem 2020/4246). Each of the Directorates-General provided the separate reply relating to the documents in its possession.

In its initial reply of 1 October 2020, Directorate E of the Secretariat-General of the European Commission (hereafter 'Directorate E') identified the following documents as falling under the scope of your initial application:

- email dated 7 February 2020, from ArcelorMittal to Ms Ilze Juhansone, Secretary-General of the European Commission, Ares(2020)648425 (hereafter 'document 1');
- Climate Action Report 1 dated May 2019 of ArcelorMittal, Ares(2020)5162747 (hereafter 'document 2').

Directorate E granted (wide) partial access to both documents, subject only to the redaction of personal data on the basis of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001. Directorate E also informed you that the search for the other requested documents was still ongoing.

In your confirmatory application, you contest the completeness of the list of documents identified by Directorate E at the initial stage.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

As regards documents 1 and 2, partially disclosed at the initial stage, following my review, I confirm that the position of Directorate E to grant (wide) partial access thereto. The limited undisclosed information still requires protection under the exception in Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

Following your confirmatory request, the European Commission carried out a search of the documents in its possession and it has identified an additional 28 documents falling within the scope of your request, namely:

- Letter of 3 February 2020 from Eurogas to the College of Commissioners, Are(2020)672226 (hereafter ‘document 3’);
- E-mail of 3 February 2020 from Eurogas to President von der Leyen, Are(2020)672226 (hereafter ‘document 4’);
- Letter of 11 February 2020 from the European Green Deal Adviser to Eurogas, Ares(2020)672226 (hereafter ‘document 5’);
- E-mail of 21 February 2020 from Eurofer to President von der Leyen, Ares(2020)1148390 (hereafter ‘document 6’);
- Discussion paper entitled ‘A Green Deal on Steel’ from Eurofer, dated February 2020, Ares(2020)1148390 (hereafter ‘document 7’);
- E-mail of 21 February 2020 from Eurofer to President von der Leyen, Ares(2020)1148390 (hereafter ‘document 8’);
- Discussion paper entitled ‘A Green Deal on Steel’ from Eurofer, dated February 2020, Ares(2020)1700597 (hereafter ‘document 9’);
- E-mail of 20 March 2020 from Eurofer to President von der Leyen, Ares(2020)1700597 (hereafter ‘document 10’);
- Letter of 20 March 2020 from Eurofer to President von der Leyen, Ares(2020)1700597 (hereafter ‘document 10a’);
- Invitation e-mail of 19 June 2020 from Hydrogen Europe to Mr Flosdorff and his reply, Ares(2020)3202972 (hereafter ‘document 11’);
- E-mail of 24 June 2020 from the European Industry sector to the European Commission and the European Parliament on ‘Wide industry coalition call for a Hydrogen Strategy’, Ares(2021)426490 (hereafter ‘document 12’);

- Letter of 24 June 2020 from European Industry sector on ‘Wide industry coalition call for a Hydrogen Strategy’, Ares(2021)426181 (hereafter ‘document 12a’);
- E-mail of 1 July 2020 from Equinor to the European Commission on ‘Advancing Hydrogen in Europe’, Ares (2020)3577103 (hereafter ‘document 13’);
- Document of 1 July 2020 from Equinor entitled ‘Plan for world-leading clean hydrogen plant in the UK’, Ares(2020)3577103 (hereafter ‘document 13a’);
- Document entitled ‘Key Facts’, Ares(2020)3577103 (hereafter ‘document 13b’);
- E-mail of 16 June 2020 from Hydrogen Europe to Mr Vandenberghe (Cabinet President) on ‘The EU Hydrogen Strategy’, Ares(2020)4308800 (hereafter ‘document 14’);
- Document entitled ‘The EU Hydrogen Strategy: Hydrogen Europe’s Top 10 Key Recommendations’, Ares(2020)4308800 (hereafter ‘document 14a’);
- E-mail of 30 January 2020 from Mr Vandenberghe to other cabinets concerning meeting with International Oil and Gas Producers, Ares(2020)5233171 (hereafter ‘document 15’);
- Email of 26 June 2020 from Equinor to the European Commission on European Hydrogen Strategy, Ares(2020)5233379 (hereafter ‘document 16’);
- Document from ThyssenKrupp, Equinor and OGE entitled ‘Clean hydrogen for a market ramp-up and for climate-neutral steel, Ares(2020)5233379 (hereafter ‘document 16a’);
- Email of 18 May 2020 from Equinor to Mr Vandenberghe, Ares(2020)5233507 (hereafter ‘document 17’);
- Document from Northern Lights of May 2020 entitled ‘CCS and the EU COVID-19 Recovery Plan’, Ares(2020)5233507 (hereafter ‘document 17a’);
- E-mail of 23 June 2020 from Hydrogen Europe to Mr Vandenberghe on H2 strategy non-paper, Ares(2020)5233700 (hereafter ‘document 18’);
- Non-Paper from Hydrogen Europe entitled ‘Input to the EC Communication on ‘Building a hydrogen economy for a climate-neutral Europe. A strategic roadmap’, Ares(2020)5233507 (hereafter ‘document 18a’);
- E-mail of 29 May 2020 from Hydrogen Europe to Mr Vandenberghe on Green Hydrogen Investment Plan, Ares(2020)5233922 (hereafter ‘document 19’);
- Document entitled ‘Green Hydrogen Investment and Support Report’, Ares(2020)5233922 (hereafter ‘document 19a’);

- Letter of 29 May 2020 sent from Hydrogen Europe to the First Vice-president Timmermans, Commissioner Simson and Commissioner Breton on ‘Hydrogen Europe CEOs ready to support Clean Hydrogen Alliance’, Ares(2021)427370 (hereafter ‘document 20’);
- Meeting report on meeting between the European Commission and Eurofer on Carbon Border Adjustment held on 6 March 2020, Ares(2020)5234185 (hereafter ‘document 21’).

I am pleased to inform you that full access is granted to documents 7, 9, 12a, 13b, 14a, 16a, 17a, 18a, 19a and 20.

Furthermore, wide partial access is granted to documents 3-6, 8, 10, 10a, 11-13, 13a, 14-19 and 21, subject to the redaction of personal data on the basis of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, for the reasons explained in Section 2.1 below.

I would like to draw your attention to Article 16 of Regulation (EC) No 1049/2001, which provides that ‘this Regulation shall be without prejudice to any existing rules on copyright which may limit a third party’s right to reproduce or exploit released documents’. Hence, as regards the European Commission documents, you may reuse them free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. The European Commission does not assume liability stemming from the reuse.

Please note that 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.

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data’.

In its judgment in Case C-28/08 P (*Bavarian Lager*)³, the Court of Justice ruled that when a request is made for access to documents containing personal data, 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

³ Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as ‘*European Commission v The Bavarian Lager* judgment’) C-28/08 P, EU:C:2010:378, paragraph 59.

Community institutions and bodies and on the free movement of such data⁴ (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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/EC⁵ (hereafter ‘Regulation (EU) 2018/1725’).

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’⁶.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’⁷.

The requested documents contain personal data such as the names, surnames, functions, contact details and handwritten signatures of persons who are not public figures acting in their public capacity, and of Commission staff members not forming part of the senior management of the institution.

The names⁸ of the persons concerned, as well as other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

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’.

⁴ OJ L 8, 12.1.2001, p. 1.

⁵ OJ L 295, 21.11.2018, p. 39.

⁶ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

⁷ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁸ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

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

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data⁹. This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 confirmatory application, 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 subjects' legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the 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.

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 the disclosure of the personal data concerned.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

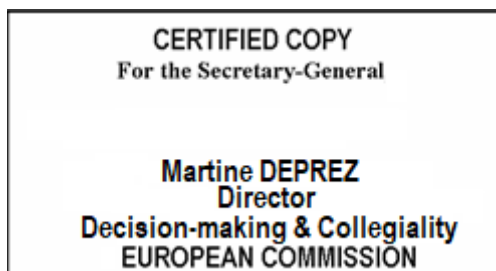
As mentioned above, (wide partial) access is hereby granted to the documents concerned.

⁹ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the Commission
Ilze JUHANSONE
Secretary-General

Enclosure: (28)