



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

The Director-General

Brussels, 24 January 2022
ENER.C.4/IMs.(2022)87159

Gligor Radecic
CEE Bankwatch Network
Heřmanova 1088/8
Prague 7, 170 00
Czech Republic

Advance copy by email:

ask+request-10409-5214930b@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2021/8142

Dear Sir,

We refer to your e-mail dated 16/12/2021 in which you make a request for access to documents, registered on 20/12/2021 under the above-mentioned reference number.

You request access to:

- Project specific cost-benefit analysis for the draft lists of gas projects per priority corridors (NSI West, NSI East, SGC and BEMIP).
- to any other document in EC possession, which records the sustainability assessment, emissions calculations (also emissions that are foreseeable) and the evaluation of flows in the infrastructure carried out for the draft list of gas projects.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I would like to inform you that your application can only be partially granted, as disclosure of some documents is prevented by exceptions to the right of access laid down in the second subparagraph of Article 4(3) (protection of the decision making process) of Regulation (EC) No 1049/2001.

1. Concerning your request about the project specific cost-benefit analysis for the draft lists of gas projects per priority corridors (NSI West, NSI East, SGC and BEMIP), I would like to inform you that the relevant documents and information which are part of ENTSOG's Ten-year Network Development Plan (TYNDP) 2020 are public and can be consulted in the TYNDP section on the website of ENTSOG¹.

2. Concerning your request about:

- “the access to any other document in European Commission possession, which records the sustainability assessment, emissions calculations (also emissions that are foreseeable) and the evaluation of flows in the infrastructure carried out for the draft list of gas projects”

Please be informed that the sustainability data on CO₂ and non-CO₂ impacts are part of the public ENTSOG TYNDP 2020 (please refer to the same link). The methane emission data, as delivered by the project promoters, can be consulted on the CIRCABC platform on 13 TEN-E Regional Group Meetings. Should you not have access to the CIRCABC folder, we invite you to request access through the application.

As regards the evaluation of flows in the infrastructure, I would like to inform you that the Commission does not hold this information, which is the result of the ENTSOG TYNDP analysis. We recommend that you to revert to ENTSOG for such information.

As regards the sustainability assessment, we have identified a series of documents developed by the TEN-E gas regional groups for the purposes of the ranking of the gas projects submitted.

In this regard, I regret to inform you that the European Commission cannot release the assessment since this goes against the confidentiality requirement, as set in the Regulation 347/2013 for the following reasons:

The documents which you seek to obtain are confidential in line with Article 4(4) of Regulation (EU) No 347/2013²:

¹ [ENTSOG Final TYNDP 2020 Projects Assessment, https://www.entsog.eu/tyndp#entsog-ten-year-network-development-plan-2020](https://www.entsog.eu/tyndp#entsog-ten-year-network-development-plan-2020)

² Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009, OJ L 115, 25.4.2013, p. 39–75

“In order to facilitate the assessing of all projects that could be eligible as projects of common interest and that could be included in a regional list, each Group shall assess each project’s contribution to the implementation of the same priority corridor or area in a transparent and objective manner. Each Group shall determine its assessment method on the basis of the aggregated contribution to the criteria referred to in paragraph 2; this assessment shall lead to a ranking of projects for internal use of the Group. Neither the regional list nor the Union list shall contain any ranking, nor shall the ranking be used for any subsequent purpose except as described in Annex III.2(14)”.

In line with Point 1(1) of Annex III of Regulation (EU) No 347/2013, only *representatives of the Member States, national regulatory authorities, TSOs, as well as the Commission, the Agency and the relevant ENTSO* are members of the regional groups and are, therefore, entitled access to the ranking.

The second subparagraph of Article 4(3), of Regulation 1049/2001 provides that access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused during and even after the decision has been taken if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure’.

The sustainability was assessed as a criterion in the PCI selection process as part of the ranking of gas projects. This assessment, as well as the assessment of the other criteria listed by the TEN-E Regulation applicable to gas projects, has allowed the regional groups to put together the ranking of the candidate projects. Therefore, this assessment is intrinsically part of the ranking. The ranking contains the results of the assessment of the candidate projects of common interest which is the basis for the decisions to be taken by the regional groups and the decision-making bodies of the regional groups for the elaboration of the regional lists of proposed projects of common interest. These considerations, arguments and deliberations are held in a strictly confidential spirit in order to enable a space of assessment and free exchange of preliminary views and policy options among the participants concerning candidate projects for the Union list of common interests. It is of utmost importance to keep this information in the decision making process, which are necessary to reach a consensus among the Member States as

on the final list of projects, confidential and free from external pressure. As mentioned in Article 4(4) of Regulation (EU) No 347/2013, the ranking serves the sole purpose of ensuring that the final list of projects of common interest contains a manageable number of projects. Therefore, this ranking does not lead in any manner automatically to a decision on the regional lists of projects of common interest, but serves to inform regional group members and facilitate their discussions, deliberations and decision-making.

The disclosure of the sustainability assessment requested would negatively affect regional group members and Member States' willingness to cooperate and express their views freely as well as harm the trust established between the participants in these meetings. The disclosure of these documents would also affect current and future project promoters that might wish to submit candidate projects of common interest as it will influence their perception of the decision-making process in particular as regards the burdens of the process.

Consequently, this would have serious consequences for the future discussions in the context of the adoption of the subsequent Union lists of projects of common interest, which are established every two years in line with Article 3(4) of the TEN-E Regulation. This, in turn, would seriously undermine the decision-making process related to the recurrent adoption of the Union list of projects of common interests. I consider this risk to be reasonably foreseeable and not purely hypothetical.

Having regard to the above, I consider that the use of the exception provided in the second subparagraph of Article 4(3) (protection of the closed decision making process) of Regulation (EC) No 1049/2001 is justified, and that access to the documents requested must be refused on that basis.

The exceptions laid down in Article 4(3) 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. Your request does not explain what overriding public interest might be applicable in the case at hand.

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 Secretary-General of the Commission at the following address:

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,

(e-signed)

Ditte Juul Jørgensen

Director General

p.p. Mechthild Wörsdörfer

Deputy Director General

Enclosure: Regulation (EC) No 1049/2001

c.c.: ENER ACCES DOCUMENTS