



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The acting Director-General

Brussels,

Subject: Your application for access to documents

Ref.: EASE 2022/5875

Dear Mr Pace,

I refer to your application initially registered on 14 October 2022¹, under the above-mentioned reference numbers, in which you make a request for access to:

“All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on September 19 between Olivér Várhelyi and Trans Adriatic Pipeline”.

I also refer to our emails of 8 November 2022² and 29 November 2022³, by which we informed you that an extended time limit was needed for the purpose of internal consultations regarding your requests.

Based on the above description of your request, we have identified the following document as falling under the scope of your request:

1. Briefing for Commissioner Oliver Varhelyi's meeting with Trans Adriatic Pipeline, 19 September 2022, CAB VARHELYI/1079.

¹ Ref. Ares(2022)7125176.

² Ref. Ares(2022)7695149.

³ Ref. Ares(2022)8261580.

Mr Barnaby Pace
Global Witness, Rue Belliard 53,
1000, Bruxelles, Belgique

By email only:
ask+request-11994-16924c3f@asktheeu.org

Having examined this document under the provisions of Regulation (EC) No 1049/2001⁴, I have decided that:

- Partial access can be granted to the identified document, as full disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(a), third indent (protection of the public interest as regards international relations), Article 4(2), first indent (commercial interests of a natural or legal person, including intellectual property), Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001;

The justifications are as follows:

1. Protection of the public interest as regards international relations

Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 provides that the 'institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations [...]'.⁵

As per settled case-law, the institutions 'must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the exceptions provided for in Article 4(1)(a) of Regulation 1049/2001] could undermine the public interest'⁵.

Consequently, 'the Court's review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exception [...] relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers'⁶.

The full public disclosure of the document identified as falling under the scope of the request would severely affect the international relations between the EU and Azerbaijan, considering that the energy sector and the gas supply in particular, is at the moment a very sensitive topic due to the uncertainties created by the current geopolitical context.

The identified document was drafted for internal purposes. Disclosing such document, which was not designed for external communications purposes, might lead to misunderstandings and/or misrepresentations by the public.

Against this background, there is a risk that full disclosure would undermine the protection of the public interest as regards international relations. I consider this risk as reasonably foreseeable and non-hypothetical, given the sensitivity of the issue and the relevance of the above-referred information in the current context of the energy market.

2. Protection of the commercial interests of a natural or legal person, including intellectual property

⁴ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, Official Journal L 145 of 31 May 2001, p. 43.

⁵ Judgment of 3 July 2014, *Council v In 't Veld*, C-350/12, paragraph 63.

⁶ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 40.

Article 4(2), first indent, of Regulation (EC) No 1049/2001 provides that ‘the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, [...], unless there is an overriding public interest in disclosure’.

The identified document contains sensitive commercial data belonging to third parties, which are not public, and their disclosure would undermine the integrity of financial operations of the entities they belong to. I refer in particular to future operations and planned investments.

The exception of Article 4(2), first indent, of Regulation (EC) No 1049/2001 has to be read in light of Article 339 of the Treaty on the Functioning of the European Union, which requires staff members of the European Union institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy.

Public access to the above-mentioned information would undermine the commercial interests of the grant beneficiaries concerned. Therefore, I conclude that access to this data should be refused.

3. Protection of the privacy and the integrity of the individual

Complete disclosure of the document is partly prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001. In particular, this document contains the names of Commission staff members not pertaining to the senior management, as well as of staff members of other organisations.

Article 9(1)(b) of the Data Protection Regulation⁷ does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data, nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested document, 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.

No overriding public interest in disclosure

To the extent that access is refused on the basis of Article 4 (2), first indent, of Regulation (EC) No 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosure. For such an overriding public interest to exist, this

⁷ 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, OJ L 295, 21.11.2018, p. 39.

interest, firstly, has to be public and, secondly, overriding, i.e. it must outweigh the interest provided by virtue of Article 4 (2), first indent, of Regulation (EC) No 1049/2001.

In your application, you do not invoke any interest except your own interest, which is of a private nature. For these reasons, you have not established arguments that would show the existence of an overriding public interest in disclosure at this point in time. Neither has the Commission identified such an overriding public interest, based on the elements in its possession. For all these reasons, I do not see in the case at hand a public interest within the meaning of Regulation (EC) No 1049/2001, that is to say objective and general in nature and which is not indistinguishable from individual or private interests that would outweigh the public interest in protecting the commercial interests of the private entities mentioned in the document.

Means of redress

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 its 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
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

[e-signed]

Maciej Popowski

Encl./ Briefing for Commissioner Oliver Varhelyi's meeting with Trans Adriatic Pipeline, 19 September 2022, CAB VARHELYI/1079.