



EUROPEAN COMMISSION  
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The Director-General (acting)

Brussels

**Subject: Your application for access to documents**

Ref.: EASE No 2022/6737

Dear Mr Barbesgaard,

I refer to your application for access to documents, registered on 22 November 2022<sup>1</sup> under the above-mentioned reference number. Your application read:

*“(...) I am requesting documents which contain the following information:*

*1) a list of meetings covering the period 1. January 2019 to date between any representative of the EU Delegation to Serbia AND representatives of mining company Río Tinto, Eurolithium and/or Volt.*

*2) minutes and other reports of these meetings;*

*3) all correspondence, including emails covering the same period”.*

I also refer to our email of 13 December 2022<sup>2</sup>, in which we explained that an extended time limit is needed in accordance with Article 7(3) of Regulation (EC) No 1049/2001<sup>3</sup> for the purpose of internal consultations.

The following documents have been identified as falling under the scope of your request:

1. Note – Head of Delegation Meeting with Rio Tinto on 18 November 2021 final, Ref. Ares(2021)7229047.

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<sup>1</sup> Ares(2022)8035507.

<sup>2</sup> Ares(2022)8645131.

<sup>3</sup> 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.

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2. Read-out from the Head of Delegation meeting with Rio Tinto on 21 January 2022, Ref. Ares(2022)739149.
3. Read-out from a meeting with the Head of Delegation and Rio Tinto on 25 March 2022, Ref. Ares(2022)2446476.
4. Report of a meeting between the Head of the Delegation and Rio Tinto on 29 June 2022, Ref. Ares(2022)5071659.

Having examined the documents under the provisions of Regulation (EC) No 1049/2001, I have decided that:

- Partial access can be granted to all the above documents 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(1)(b) (protection of the privacy and integrity of the individual) and Article 4(2) first indent (protection of the commercial interests of a natural or legal person, including intellectual property) of Regulation (EC) No 1049/2001.

Finally, please note that no documents related to meetings between Volt and the EU Delegation, or Eurolithium and the EU Delegation have been identified.

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 [...]*'.

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'*<sup>4</sup>.

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'*<sup>5</sup>.

The full public disclosure of these documents would severely affect the international relations between the EU and the Serbian authorities, given the content of the documents which provide insight into the parties' positions on sensitive topics.

In addition, all identified documents were drafted as read-outs of meetings conceived for internal purposes. Disclosing these documents, that were not designed for external communications purposes, might lead to misunderstandings and/or misrepresentations

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<sup>4</sup> Judgment of 3 July 2014, *Council v In 't Veld*, C-350/12, paragraph 63.

<sup>5</sup> Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 40.

regarding the nature of certain activities in Serbia and the feedback of the EU and local and international third parties about it.

Serbia has been a candidate country to the European Union since March 2012. As a candidate country, Serbia is actively engaged in carrying out reforms in order to achieve the standards required for EU membership. The implementation of these reforms is also followed in the framework of the Stabilisation and Association Agreement process. Therefore, there is a risk that the full disclosure of the documents in question 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 EU accession context of Serbia.

## **2. Protection of the privacy and the integrity of the individual**

Full disclosure of all documents is 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, these documents contain the names of individuals who are not public figures and personal data pertaining to Commission staff who does not belong to the senior management such as names, email addresses and job titles that would allow the identification of the individuals.

Article 9(1)(b) of the Data Protection Regulation<sup>6</sup> 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 documents, 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.

## **3. Protection of the commercial interests of a natural or legal person, including intellectual property**

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’*.

All identified documents contain 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.

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<sup>6</sup> 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.

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 third party concerned. Therefore, I conclude that access to this data should be refused.

### **No overriding public interest in disclosure**

The exception laid down based on Article 4(2), first indent, 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.

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 decision-making process.

### **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 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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

(e-signed)  
Maciej POPOWSKI

Encl./ Documents 1, 2, 3 & 4