



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

The Director-General

Brussels
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Dear Ms Bounfour,

Subject: Your application for access to documents – EASE 2023/0365

We refer to your request for access to European Commission documents registered on 19 January 2023 under the above-mentioned reference number.

You request access to the following documents:

“1. All briefings, minutes of meetings, and correspondence (including email, SMS, private twitter and WhatsApp) since January 1st 2021 between representatives of Shell Companies, or PR companies or law firms representing, Shell Companies and Commissioner Adina Vălean, and/or members of her cabinet and/or officials from DG Move, in which the Euro VII OR OR CO2 regulation for light vehicles OR CO2 regulation for heavy-duty vehicles OR the Renewable Energy Directive (RED) OR ReFuelEU Aviation, OR FuelEU Maritime, OR AFIR directive were discussed.

2. All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, transcripts and recordings) AND the meeting minutes/notes relating to the meeting between members of cabinet of Commissioner Adina Vălean and Shell Companies on 08th of December 2022.”

I consider your request to cover documents held up to the date of your initial application, i.e. 19 January 2023.

We have identified the following documents as falling within the scope of your application:

- **Annex 1:** Letter from a representative of Shell Companies to DG MOVE concerning the follow-up to a meeting held with DG MOVE on 4 March 2021, dated 7 April 2021;

- **Annex 2:** Flash report of meeting between representatives of Shell Companies and DG MOVE officials to discuss the FuelEU Maritime initiative, held on 4 June 2021;
- **Annex 3:** E-mail from a representative of Shell Companies to the Director-General of DG MOVE concerning a request for a meeting to discuss the framework for transport under the Fit for 55 package, dated 20 October 2022;
- **Annex 4:** Briefing for the meeting between a representative of Shell Companies and DG MOVE officials to discuss the framework for transport under the Fit for 55 package, held on 8 December 2022;
- **Annex 5:** Report of the meeting between representatives of Shell Companies and DG MOVE officials to discuss the framework for transport under the Fit for 55 package, held on 8 December 2022;
- **Annex 6:** Flash note of a meeting between a representative of Shell Companies and DG MOVE officials to discuss on electric mobility, held on 28 June 2022;
- **Annex 7:** E-mail exchange between a representative of Shell Companies and members of the Cabinet of Commissioner Vălean concerning a request for a meeting to discuss the framework for transport decarbonisation under the Fit for 55 package, dated between 21 November and 8 December 2022.

Concerning all documents listed above, we have come to the conclusion that they may be partially disclosed. A complete disclosure of the identified 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 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾ (hereinafter ‘Regulation (EC) No 1049/2001’), because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;
- other information relating to identified or identifiable natural persons, in particular references to their functions, to the extent that these would enable their identification.

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.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

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 ⁽²⁾ (hereinafter ‘Regulation (EU) 2018/1725’, or ‘Data Protection Regulation’).

In particular, Article 3(1) of Regulation (EU) 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 ⁽³⁾.

In its judgment in Case C-28/08 P (Bavarian Lager) ⁽⁴⁾, 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 ⁽⁵⁾.

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’.

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

According to Article 9(1)(b) of the Regulation (EU) 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

⁽²⁾ 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 205 of 21.11.2018, p. 39).

⁽³⁾ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

⁽⁴⁾ Judgment of 29 June 2010 in Case C-28/08 P, *Commission v Bavarian Lager*, ECLI:EU:C:2010:378, paragraph 63.

⁽⁵⁾ 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 (EU) 2018/1725.

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 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. 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.

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 these 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 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 the disclosure of their personal data.

As regards **Annex 1**, parts of this document have also been redacted as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation (EC) No 1049/2001.

Article 4(2), first indent of this Regulation lays down 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”*.

A complete disclosure of the identified document is prevented as it would undermine the protection of the commercial interests of the company that submitted it. Indeed, the redacted parts of this document contain information which, if put in the public domain, would affect its competitive position on the market, as they refer to market views which are considered commercially sensitive. Therefore, the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001 applies to the redacted parts of this document.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have examined whether there could be an overriding public interest for the disclosure of the concerned part of Annex 1. However, we have not been able to identify in this case any other public interests capable of overriding the public interests protected by Article 4(2) of Regulation (EC) No 1049/2001.

Please note that the 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.

Please also note that the disclosed briefing, flash note and reports were drawn up for internal use under the responsibility of the relevant officials of the Directorate-General for Mobility and Transport. They solely reflect the authors' interpretations of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. They also do not reflect the position of the Commission and cannot be quoted as such.

In case you would disagree with this position, 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 to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

by asking for a review via your portal ⁽⁶⁾ account (available only for initial requests submitted via the portal account),

or by mail:

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,

Henrik HOLOLEI

Enclosure: 7 annexes

⁽⁶⁾ <https://www.ec.europa.eu/transparency/documents-request>