



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

The Director-General

Brussels, 18 DEC. 2014
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Registered letter

Ms E Deront
17 av Guillaume Apollinaire
91250 - St Germain lès Corbeil
France

Subject: Your request for access to documents

Ref.: Gestdem 2014/3937

Dear Ms Deront,

We refer to your e-mail dated 05/09/2014 in which you make a request for access to documents, and which was registered on the same day under the above mentioned reference number.

Documents covered by your request

Your application concerns minutes and reports of meetings held since 11 March 2011 by Commissioner Oettinger and/or members of his Cabinet and/or DG ENER staff with the entities listed in your email, and during which the subjects you mention were discussed.

In your email you requested to be provided with documents on a rolling basis. I am informed that those documents covered by your request which dealt with meetings held by Commissioner Oettinger or members of his cabinet have already been sent to you on this basis. This letter will therefore address only meetings attended by DG ENER staff.

Most contacts by DG ENER with the entities specified in your request take place in the framework of the European Nuclear Energy Forum (ENEF). The minutes of ENEF meetings are for the most part available on DG ENER's website, specifically on the webpages dedicated to ENEF: http://ec.europa.eu/energy/nuclear/forum/forum_en.htm. I therefore invite you to consult the minutes of these meetings on this webpage. The webpages dedicated to ENEF's subgroups are also of relevance in this regard, and may be accessed by clicking on the respective links on the left hand side of the above webpage.

Other documents covered by your request are listed in the enclosed annex. Documents 9, 14, 23, 29 and 36 contained reports of multiple meetings, some of which are not covered by your request. For this reason, only those parts of the documents which are covered by your request were taken into account by the Commission in assessing whether access should be granted, and the parts which were of no relevance to your request were removed. This enabled the Commission to handle your extensive request more expeditiously.

It should also be noted that the documents listed in the annex include minutes of ENEF meetings which are currently not available on the DG ENER website (documents 1-3, 5-13, part of 14, 15, 17, part of 18, 19, 20, 22, 23, 26-28, 30, 32, 35-37).

Due to the volume of documents covered by your request, it was deemed more practical to provide these documents to you in an electronic format. You will therefore find copies of the documents in question, in the form in which they are being disclosed to you, on the CD which is enclosed with this letter.

Documents containing personal data

The documents to which you have requested access contain personal data, in particular the names and email addresses of Commission staff and of other participants in the relevant meetings.

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 Community legislation regarding the protection of personal data. The applicable legislation in this field is 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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable². According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

Due to the transparency policy applicable to ENEF meetings, with minutes of the meetings being regularly uploaded on the DG ENER website (including the names of participants), we consider that there is no reason to believe that the rights of these individuals would be prejudiced by disclosure, as the relevant data is already in the public domain. Consequently, full access is being granted to all ENEF minutes, including those which are not available on the website. For those individuals whose names appear in any of these documents, we also considered that there was no reason to expunge them whenever they appeared again in the remaining documents listed in the Annex, since their identity would already have been disclosed and therefore it could not be concluded that their rights would in any way be prejudiced.

¹ OJ L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

For other individuals not having previously participated in ENEF meetings however, we consider that, with the information available, the necessity of disclosing their personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, for documents 4, 16, 18, 21, 25, 29, 31, 33 and 39 we are disclosing the documents requested expunged from this personal data.

If you wish to receive the personal data, we invite you to provide us with arguments showing the need for having this personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

Documents to which partial access is being granted

Specifically with regard to document 33, I have come to the conclusion that this document may be partially disclosed. Some parts of the document have been blanked out as their disclosure is prevented by the exception to the right of access laid down in Article 4, paragraph 1(a), third indent, of Regulation 1049/2001. The expunged parts of the document contain off-the-record remarks made by German representatives and representatives of the International Atomic Energy Agency (IAEA) during a meeting which was not open to the public. Disclosure of these parts would therefore undermine the protection of the public interest as regards international relations, in so far as officials from Member States and from international organisations would hesitate to engage in frank discussions with Commission officials should they know that their views could subsequently be made public.

The excerpts in question are also covered by the exception in Article 4(3), first subparagraph, of the Regulation, in that they were drawn up by an official of the Commission for internal use and relate to a matter where the decision has not yet been taken by the institution. The meeting in question discussed a recent study commissioned by the institution in the area of emergency preparedness and response arrangements. This study will inform the Commission's decisions as to which initiatives should be launched in this area in the near future. Disclosure of these excerpts would seriously undermine the Commission's decision-making process, as it would discourage other officials in similar situations from giving a detailed account of proceedings at such events. This would in turn deprive the Commission from access to valuable information, which is indispensable in ensuring that it formulates its policies on the basis of feedback from all relevant stakeholders, foremost amongst them the IAEA.

The exception laid down in Article 4(3) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure. We believe that the public interest in disclosure in this case is outweighed by the interest of the Commission, and indeed of the general public, in ensuring that policies are based on the best available knowledge and on the input of all stakeholders, as explained above.

Documents to which access is being refused

Regretfully, access to document 24 cannot be granted as it is covered by the exceptions to access laid down in Article 4, paragraph 1(a), third indent, and paragraph 2, first indent, of Regulation 1049/2001. The document contains information about AREVA's activities and commercial intentions in China, the disclosure of which could be harmful to AREVA's business interests. The document also contains information about the potential negotiation of a Euratom-China agreement, and in particular about the preliminary views of specific Member States on this subject. Should this information be disclosed, the negotiating position of the Commission vis-à-vis its Chinese counterparts would be undermined as the latter would be made aware of and could consequently exploit different points of divergence between the Member States.

The document also contains opinions from the Commission official who participated in the meeting. The disclosure of the document is therefore also precluded by the exception to access laid down in Article 4(3), first subparagraph, of the Regulation. The document was intended for the Commission's internal use in a matter where the decision has not yet been taken. Negotiations with China on a Euratom-China agreement could resume in the future, and the disclosure of the document would result in a risk of self-censorship on the part of Commission officials when giving an account of similar meetings. The decision-making process of the Commission would thus be seriously undermined as the institution would be deprived of access to a written record of such meetings.

Moreover, the document also contains personal data, specifically the names of the participants, disclosure of which is precluded by Article 4(1)(b) of the Regulation.

As regards documents 34 and 38, access is likewise being refused. The documents in question relate to meetings with representatives of the Hungarian authorities and others during which the project for the enlargement of the Paks nuclear power plant was discussed. The documents contain details of the project, the disclosure of which would be prejudicial to the commercial interests of the operator of the plant. Moreover, they also contain information about ongoing negotiations between the Hungarian authorities and their Russian partners. The Hungarian authorities have repeatedly made it clear to the Commission that the disclosure of such information could undermine these negotiations and would therefore be detrimental to the public interest as regards international relations. The documents are therefore covered by the exceptions laid down in Article 4, paragraph 1(a), third indent, and paragraph 2, first indent, of Regulation 1049/2001.

Moreover, investigations are ongoing on the part of the Commission as regards the project's compatibility with various provisions of EU and Euratom law, and the documents in fact contain preliminary views of Commission officials in this regard. Commission services must be able to explore all possible options in preparation of a decision, free from external pressure. Therefore the exceptions laid down in Article 4, paragraph 2, first indent, and paragraph 3, first subparagraph, of Regulation (EC) No 1049/2001 also apply to this document.

For these three documents (24, 34 and 38), insofar as they are covered by the exceptions in Article 4(2) and (3) of Regulation 1049/2001, we also consider that there is no overriding public interest in disclosure of the documents, as it is our view that the public interest is better served in ensuring that the Commission arrives at sound decisions following the examination of all relevant facts.

We have also considered whether partial access could be granted to the above three documents. However, since different parts of the documents are covered by the different exceptions cited above, the resulting documents would be rendered meaningless after all sensitive information is removed.

Remedies available

In accordance with Article 7(2) of Regulation 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
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles

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

Yours faithfully,

Dominique Ristori

Enclosure:

List of documents
CD containing copies of relevant documents

Annex: List of documents

No.	Date of meeting(s)	Description	
1	7 March 2011	ENEF "Competitiveness" Sub-Working Group Meeting	
	24 March 2011	ENEF "Opportunity" Working Group Meeting ENEF "Risk" Working Group post-Fukushima Meeting	
2	14 March 2011	Meeting of ENEF Non-Proliferation Sub-Working Group and Joint Meeting of ENEF "Non-Proliferation" and "Legal Roadmap" Sub-Working Groups	
3	4 May 2011	ENEF "Risks" Working Group Meeting	
4	5-6 May 2011	Visit to Gorleben on invitation from Foratom	
5	19-20 May 2011	ENEF Plenary	
6	20 September 2011	ENEF "Waste Management" Sub-Working Group Meeting	
7	27 September 2011	ENEF "Risks" Working Group Meeting	
8	15-16 November 2011	ENEF Task Group "National Programmes" Meeting	
9	13 December 2011	ENEF "Opportunity" Working Group Meeting (part of document)	
10	12-13 January 2012	ENEF Task Group "National Programmes" Meeting	
11	9 February 2012	ENEF "Nuclear Installation Safety" Sub-Working Group Meeting	
12	23 February 2012	ENEF Core Group "European Reactor Design Approval"	
13	29 February 2012	ENEF "Nuclear Legal Roadmap" Sub-Working Group Meeting	
14	2 March 2012	ENEF "Competitiveness" Working Group Meeting	} part of document
	19-21 March 2012	Meeting with Foratom	
	4 April 2012	ENEF "Opportunities" and "Competitiveness" Working Groups Meetings	
15	22 March 2012	ENEF "Nuclear installation Safety" Sub-Working Group Meeting	
16	4 June 2012	Rountable "Sustainability of the energy fuels in the 21st Century"	
17	22 June 2012	ENEF "Competitiveness" Sub-Working Group Meeting	
18	4 September 2012	Eurelectric	
	10-13 September 2012	Visit to EDF Brussels Office	
	2-3 October 2012	ENEF "Competitiveness" and "Financing" Sub-Working Group Meetings	

19	27 September 2012	ENEF "Nuclear Installation Safety" Sub-Working Group - Task Force to draft input for the Revised Nuclear Safety Directive	
20	2 October 2012	ENEF "Competitiveness" Sub-Working Group Meeting	
21	30 October 2012	EU-Russia Energy Dialogue – Thematic Group on Nuclear Energy	
22	13 November 2012	ENEF "Crisis Communication" Sub-Working Group Meeting	
23	26 November 2012	ENEF "Financing" Sub-Working Group Meeting	} part of document
	29 November 2012	ENEF Chairs meeting	
24	9 January 2013	Meeting with AREVA on China	
25	15 January 2013	Euratom-Russian Federation cooperation agreement in peaceful uses of nuclear energy	
26	15 March 2013	ENEF "Crisis Communication" Sub-Working Group Meeting	
27	5 April 2013	ENEF "Nuclear Installation Safety" Sub-Working Group Meeting	
28	16 May 2013	ENEF "Crisis Communication" Task Force Meeting	
29	18 June 2013	Foratom evening event on Green Paper 2030 (part of document)	
30	27 June 2013	ENEF "Waste" Sub-Working Group Meeting	
31	5 September 2013	NULUC event	
32	6 September 2013	ENEF "Crisis Communication" Task Force Meeting	
33	11-12 September 2013	Emergency Preparedness and Response Study, Core Group Meeting	
34	26 November 2013	Meeting between Commission representatives from various services and Oettinger Cabinet with representatives of the Hungarian government, Rosatom and others on the Legal and Technical Framework of Paks' Nuclear Power Plant Enlargement	
35	15 January 2014	ENEF "Foundation Principles" Task Group Meeting	
36	16 January 2014	Joint Meeting of ENEF "Competitiveness" and "Opportunities" Working Groups (part of document)	
37	4 February 2014	ENEF "Waste" Sub-Working Group Meeting	
38	3 June 2014	Meeting between Commission representatives from various services and Oettinger Cabinet with representatives of the Hungarian government and Rosatom on the Legal and Technical Issues of Paks Nuclear Power Plant Enlargement	
39	5 June 2014	NULUC Meeting	