



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Director-General

Brussels, 07 AOUT 2018
JP/cvc/ener.a.3.dir(2018)4577197

By registered letter with acknowledgment of receipt

Peter TEFFER
EU observer
Rue Montoyer 18B
1000 Brussels

Copy by email:
ask+request-5151-a93d2fe6@asktheeu.org

Subject: Your application for access to documents - GestDem 2018/0994

Dear Mr Teffer,

I refer to your e-mail dated 15 February 2018 in which you made a request for access to documents, registered on 15 February 2018 under the above mentioned reference number.

You requested access to all preparatory documents, presentations, minutes and verbatim reports related to the 4th Southern Gas Corridor Advisory Council held on 14 February 2018.

By letter of 23 April 2018, registered as ARES(2018)2072604, the Commission identified a series of documents that met this request. The Commission provided copies of some of these documents, indicated that for others that it was consulting third parties and refused access to one document. For the document for which access was refused (document 2 below), you have submitted a confirmatory request on 9 May 2018, registered on 15 May 2018, and this will be the subject of a separate reply.

The following table summarizes the situation to date:

	Document type	Released?	Status
1	Request to launch the Written Procedure for the Joint Declaration (Ares(2018)334695) and attachments, consisting of: a) Cover note,	Yes	
	b) Draft version of the Joint Declaration,	No	Consulting third party
	c) Tracking document ("fiche de suivi"),	Yes	
	d) Draft Commission Decision	Yes	
2	Brief for Vice President Šefčovič	No	Confirmatory request
3	Agenda	No	Consulting third party
4	Joint Declaration	No	Consulting third party

5	Presentation on TAP	No	Consulting third party
6	Presentation on TANAP	No	Consulting third party
7	Presentation on Shah Deniz II Upstream/SCPX	No	Consulting third party

We are now in a position to inform you that:

- Full access is granted to documents 1(b), 3 and 6.
- Access is refused to document 4 based on the exception of Article 4(1)(a), third indent (protection of the public interest as regards international relations). This document, which is the final version of the Joint Declaration of the Southern Gas Corridor Advisory Council of 15th February 2018 was not, in the end, signed by all the intended signatories and therefore the authorities of Azerbaijan are opposed to its disclosure.

Quality relations with Azerbaijan, as well as mutual trust are paramount for the evolution of this project. The General Court has acknowledged in a recent judgment that ‘the way in which the authorities of a third country perceive the decisions of the European Union is a component of the relations established with that third country. Indeed, the pursuit and the quality of those relations depend on that perception’¹ and can justify the application of the exception of Article 4(1)(a) third indent of Regulation 1049/2001. In this concrete case, it is apparent that if the Commission were to disclose, against the expressed opposition of the authorities of Azerbaijan, the final version of the Joint Declaration, this would negatively affect the relations of the EU with Azerbaijan and could undermine the trust necessary to complete the Southern Gas Corridor project.

- Access is refused to document 5, based on the exception of Article 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property). This document is a presentation on the progress on the Trans-Adriatic Pipeline (TAP) by the consortium. The TAP consortium have informed the Commission that they oppose disclosure of this document, since the facts and figures contained in the presentation are now quite out of date as the project has progressed considerably since February 2018. They have instead indicated that contact should be taken directly with them at media@tap-ag.com for latest updated figures and slides related to the project.
- Partial access to document 7, subject to redactions of limited parts which are protected under the exception of Article 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property). The redacted parts contain confidential information of the consortium, the disclosure of which would harm their commercial interests, including more detailed information on the project going forward.

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting partial access to documents 4 and 5. However, no meaningful partial access is possible, given that the withheld information included therein is covered

¹ Judgment of the General Court of 27 February 2018, Case T-307/16, *CEE Bankwatch Network v European Commission*, EU:T:2018:97, paragraph 90.

in its entirety by the exceptions provided for in respectively Article 4(1)(a), third indent, and Article 4(2), first indent, of Regulation 1049/2001.

The exception laid down in Article 4(2), first indent, of Regulation 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. On the basis of your request, we are not able to identify any such overriding public interest in disclosure of document 5 or the redacted parts of document 7. Please note that the exception laid down in Article 4(1)(a) of Regulation 1049/2001, on the basis of which access to document 4 is refused, is an absolute exception, i.e. its applicability does not need to be balanced against overriding public interest in disclosure.


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 5/282
B-1049 Bruxelles

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

Yours sincerely,


DOMINIQUE RISTORI
Substitutif for
Dominique RISTORI