



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

The Director-General

Brussels,
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*By registered letter with acknowledgment
of receipt*

Corporate Europe Observatory
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Advance copy by email :
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Subject: Your request for access to documents - Ref GestDem No 2018/4508

Dear Mr Sabido,

In your initial email dated 22 August 2018, registered as GestDem 2018/4508, you asked for the following to be made available to you:

- *All minutes/notes and/or related correspondence (both before and after) of all the lobby meetings of DG ENER Director Klaus-Dieter Borchardt from January 2016 to 22 August 2018.*

Scope of your application

As your application concerned a very large number of documents, following Article 6(3) of Regulation 1049/2001, we consulted you on 10 April 2019 with a view to find a fair solution and proposed you to select a maximum 20 to 30 documents that could fit within the scope of your request.

Following your reply of 26 April 2019 and taking into account your selection of 28 documents based on the list we submitted to you, it is with regret that I inform you that the selection of another batch will not be possible.

In its judgment of 10 December 2010 in Case T-494/08, *Ryanair v Commission*, ECLI:EU:T:2010:511, paragraph 34, the General Court confirmed that Article 6(3) of Regulation 1049/2001 may not be evaded by splitting an application into several, seemingly separate, parts.

Therefore, the European Commission will no longer agree on handling wide scope requests in batches, which would go beyond the time limits provided for in Regulation 1049/2001.

The handling of your application, having regard to the volume of the documents requested, the third parties to be consulted and/or the number of passages to be censured, would involve an unreasonable administrative burden and would be disproportionate.

With a view to safeguarding the interests of good administration, we therefore see ourselves obliged to balance your possible interest in access against the workload resulting from the processing of your application. This is in line with the case law of the EU Courts (judgment of the Court of Justice of 2 October 2014 in case C-127/13, *Strack v Commission*, paragraphs 27-28).

Moreover, after the further detailed assessment of all the documents you have chosen from the list, we consider that documents Ares(2016)1024798, Ares(2016)1921567, Ares(2016)249455 do not fall under the scope of your request.

Therefore, in this reply we will examine your request to access the 25 documents listed in the Annex, based on your reply of 26 April 2019.

Documents partially accessible subject to redaction of personal data only

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have concluded that the documents n°Ares(2017)3187970, Ares(2016)1264651, Ares(2016)1953697, Ares(2016)3975973, Ares(2016)4522907, Ares(2016)6083424, Ares(2016)6729035, Ares(2016)7163927, Ares(2016)789659, Ares(2016)854858, Ares(2017)2017680, Ares(2017)2323910, Ares(2017)2687805, Ares(2017)3185614, Ares(2017)3297831, Ares(2017)3616176, Ares(2018)1963190, Ares(2018)291754, Ares(2018)3284541 and Ares(2018)4910702 mentioned may be partially disclosed, subject only to the redaction of personal data.

As for Ares(2018)4910702 mentioned above, please note for your information that the public final version of the full technologies roadmaps is available at: Hydrogen Europe Technology Roadmaps .

With regard to the documents listed above, 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, 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;
- handwritten signatures/abbreviated signatures of natural persons;

Article 9(1)(b) of the Data Protection Regulation 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 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.

Please note that 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.

Documents not accessible

Following an examination of documents Ares(2016)2707930, Ares(2016)3727225, Ares(2017)3647850, Ares(2017)55694, Ares(2018)4033809 under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third parties, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

According to Article 4(2), first indent, of Regulation (EC) No 1049/2001, *"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 documents which you seek to obtain contain commercially sensitive business information of the company that submitted it.

The authors of the documents have objected to disclose the documents that they sent to the Commission and have substantiated their concerns.

Disclosure of Naftogaz's letter Ares(2016)2707930 and the European Commission's letter Ares(2016)3727225 would undermine Naftogaz's commercial interests for the following reasons.

The subject matter of both requested documents is the unbundling of the Transmission System Operator for gas ('TSO') in Ukraine.

Since Naftogaz position in the ongoing arbitration against PJSC Gazprom depends on the choice of the unbundling model, the disclosure of any past communication between Naftogaz and third parties which concerns the position no longer supported by the company is likely to harm Naftogaz interests in this arbitration by creating uncertainty and confusion as well as artificially challenging the credibility of Naftogaz position. The same is true for the interests of Naftogaz and the state of Ukraine in the ongoing talks with PJSC Gazprom on future gas transit flows through Ukraine after 2019. Naftogaz position in these negotiations largely relies on the continuation of the said arbitration against PJSC Gazprom; specifically, the claims that are advanced by Naftogaz in the said arbitration rely on the end of gas transit from Russia through the Ukrainian territory after 2019, so that as long as these claims remain valid, the bargaining position of the Ukrainian side is sustained.

Therefore, the release of the requested documents will have a real and non-hypothetical negative effect on Naftogaz's commercial interests.

In this respect, access to the requested documents must be denied on the basis of the exception laid down in the first indent of Article 4(2) of Regulation 1049/2001.

As regards the letter under reference Ares(2017)3647850, disclosure would undermine the commercial interests of ENTSO-E because it would be counterproductive and harming public interest to disclose on a very sensitive topic such as the Participation of Norwegian TSOs on the network code and methodology implementation, a letter which does not reflect the position of ENTSO-E - as it was not signed – and which also does not reflect the position of the European Commission - as confirmed in a subsequent exchange with the European Commission.

As regards the letter, Ares(2017)55694, disclosure would undermine the commercial interests of GAZ-SYSTEM. This letter contains commercially sensitive information, especially concerning crossing agreements. As stated in this letter, crossing agreements are vital for the timely execution and final commissioning of the Baltic Pipe project. GAZ-SYSTEM is currently in the process of negotiations of the crossing agreements with Nord Stream 1 and 2 pipelines as well as with the cable owners. Therefore, in view of these negotiations, this letter is to be considered as sensitive and confidential.

As for your request regarding Ukrtransgaz' letter Ares(2018)4033809 sent to Transgaz and in copy to the European Commission, Transgaz considers that the above mentioned document cannot be made accessible taking into account the provisions of Article 4(1)(a), third indent - international relations, of Article 4(2) first indent - commercial interests of a natural or legal person, including intellectual property and of Article 4(3) - disclosure of the document would seriously undermine the institution's decision-making process, of Regulation (EC) No 1049/2001.

The exceptions laid down in Article 4(2) and Article 4(3) 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. Based on the information at our disposal at this stage we do not consider that such an overriding public interest in disclosure has been established with respect to the above mentioned documents.

We have also considered whether partial access can be granted in accordance with Article 4(6) of Regulation 1049/2001. However, for the reasons explained above the exceptions to the right of access apply to the whole of the documents in question.

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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Bruxelles,

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

Yours sincerely,

Ditte Juul Jørgensen