



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
JOINT RESEARCH CENTRE
Director-General

Brussels,
JRC.A4/CRS/Ares(2020)

***By registered letter with
acknowledgment of receipt¹***

Mr Matas Lasauskas
Movement against Astravyets NPP
J. Tumo-Vaizganto 5-4
LT-01108 Vilnius

Sent by pdf only to:
ask+request-7867-0e92dea9@asktheeu.org

Dear Mr Lasauskas,

Subject: Your application for access to documents – Ref. GestDem No 2020/2445

We refer to your application dated 17 April 2020, in which you make requests for access to documents under Regulation (EC) No 1049/2001 regarding public access to documents² as well as under Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention³, registered on 24 April 2020 under the above-mentioned reference number.

1. SCOPE OF THE REQUEST

You request access to “*any documents on the issues related to Belarus nuclear power plant project in Astravyets (NPP Astravyets), its nuclear safety and security and its adverse environmental, economic and the security of energy supply effects as well as possible adverse impact on the stability of energy supply and transmission systems in the Union. This in particular concerns the territorial areas of the Union, including but not limited to the territories neighbouring the Republic of Belarus and the Russian Federation,*

¹ According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.

² Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

³ Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p.13)

that may be affected by this project. This request also concerns all and any documents testifying the actions requested from, initiated by and deployed through the Union bodies to mitigate those adverse effects (...)".

Please note that due to the wide scope of your request, covering also areas falling under the responsibility of other Directorates-General of the Commission, parts of your request have been attributed to those other Directorates-General⁴ concerned. This reply relates only to the documents held by the Joint Research Centre. You will receive the replies from the other Directorates-General separately.

2. IDENTIFICATION AND ASSESSMENT OF THE DOCUMENTS

We have identified **15** documents (including one annex) falling under the scope of your request.

Having examined these documents under the provisions of Article 4 of Regulation (EC) N°1049/2001, we have come to the following conclusion:

- **1** document can be fully disclosed (document n° 13)
- **9** documents can be partially disclosed (documents n° 1, 2, 3, 4, 5, 6, 6.1, 7, 11)
- Access to **5** documents must be refused (documents n° 8, 9, 10, 12 and 14)

You will find attached a table (Annex A) listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001. You will also find enclosed the ten documents which are indicated with "Yes" or "Partial" in the table.

We would like to draw your attention to the fact that parts of documents n° 5 and 7 originate from the Lithuanian authorities. They 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.

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the Commission Decision on the reuse of Commission documents. You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

3. LEGAL ANALYSIS

Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on access to information in environmental matters to Community institutions and bodies does not apply to documents held within the framework of the European Atomic Energy Community, as confirmed by the General Court.⁵

The legal analysis below focuses therefore on the list of derogations in Article 4 of Regulation (EC) No 1049/2001.

⁴ GestDem 2020/2240: DG ENER, GestDem 2444: DG ENV, GestDem 2020/2446: Secretariat General

⁵ Judgement of the General Court of 27 February 2018, *CEE Bankwatch Network v. Commission*, T-307/16, paragraph 71

3.1. Reasons for partial disclosure

3.1.1. Article 4(1)(b) of Regulation (EC) No 1049/2001 – Protection of privacy and the integrity of the individual

Personal data were redacted in documents n° 1, 2, 3, 4, 5, 6, 7 and 11. They were the sole redactions in documents 3, 7 and 11.

With regard to those documents, 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;
- other information relating to an identified or identifiable natural person.

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 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, we 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.

3.1.2. Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 – Protection of the public interest as regards public security

Parts in documents 1, 2; 4, 5 and 6.1 have been redacted under the exception concerning the protection of the public interest as regards public security outlined in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

The parts relate to security aspects of the Astravyets NPP. Disclosing security aspects may result in the information reaching ill-intentioned individuals and therefore jeopardise the public security.

3.1.3. Article 4(2) first indent – Protection of commercial interests

Under the first indent of Article 4(2) of Regulation No 1049/2001, the Commission may refuse access to a document where its disclosure would undermine the protection of 'commercial interests of a natural or legal person, including intellectual property'.

Document 4 contains technical information on another NPP bearing no relation to the Belarus NPP. This information is commercially sensitive as it comprises technical specificities of the facilities and it has been communicated confidentially to the Commission. The relevant parts have therefore been redacted in document 4.

3.1.4. *Article 4(3) of Regulation (EC) No 1049/2001 – Protection of the decision-making process*

In document n° 6, some parts have been redacted in order to protect the decision-making process of the Commission and Member States, in accordance with Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001.

Document 6 is a briefing prepared for the Director General of the JRC for a meeting with the Lithuanian ambassador on topic of common interests.

The withheld parts reflect internal opinions expressed in a briefing. They contain the views of staff of the Joint Research Centre on certain topics and the assessment of possible solutions and lines to take.

Briefings are internal documents intended to give senior management all the relevant information and advice necessary for them to adopt the best course of actions and serve the objectives of the Commission.

The possibility for staff members to express their views and give advice in a free and independent manner, free from external pressure is essential for the smooth functioning of the institution.

There is a risk that disclosure of such an information would lead to misinterpretations and misunderstandings that would seriously undermine the decision-making process, as it would put in the public domain individual positions, which were not meant for public disclosure and which do not represent the final position of the institution. Public disclosure would therefore undermine the frank and sincere discussion on possible options among the European Commission services. This, in turn, would seriously undermine the decision-making process and the quality of the European Commission's decisions now and in the future.⁶

3.1.5. *Article 4(1) third indent of Regulation (EC) No 1049/2001 – Protection of the public interest as regards international relations*

The Lithuanian authorities transmitted documents at the occasion of meetings with the Commission. Documents 5 and 7 are mission reports of such meetings and include in annexes such documents.

In accordance with Article 4(4) of Regulation (EC) No 1049/2001, the Commission consulted the Lithuanian authorities with a view to assessing whether an exception in its paragraphs 1 or 2 is applicable.

The Lithuanian authorities agreed to the disclosure of most documents with the exception of two annexes in document 5. These annexes present consideration on the import of electricity from third country and disclosure may undermine the protection of the public interest as regards international relations.

⁶ Judgment of the Court of Justice of 21 July 2011, *Sweden v MyTravel and Commission*, C-506/08 P, EU:C:2011:496, paragraph 78 and Judgment of the General Court of 15 September 2016, *Philip Morris v Commission*, T-18/15, EU:T:2016:487, paragraph 87.

3.2. No disclosure: Article 4(1)(a) third indent of Regulation (EC) No 1049/2001 – Protection of the public interest as regards international relations

Five of the documents identified will not be disclosed (documents n° 8, 9, 10, 12 and 14).

Document 8 is the mission report of JRC participants to the Integrated Regulatory Review Service (IRRS) in Belarus by the International Atomic Energy Agency (IAEA).

Documents 9, 10 and 12 were drafted in the context of the operating of the Convention of Nuclear Safety (CNS), at the occasion of the 7th and 8th Review meetings.

Document 14 is an analysis of the current situation in the NPP to support the current negotiation with Belarus to pursue stress test peer review.

First, international organisations have strict rules as regards the confidentiality of the information gathered. Confidentiality of the deliberations is the rule for IAEA IRRS missions and the JRC has signed a non-disclosure agreement with the IAEA for its participation in the mission reported in document 8.

In the same way, deliberations held by the CNS are confidential and Parties are not allowed to disclose the content of the meeting. Article 27(3) of the Convention stated that the content of the debates during the reviewing of the reports by the Correcting Parties at each meeting shall be confidential. Each Party is free to disclose the points concerning its own nuclear facilities but cannot do so on topics concerning other Parties. This rule covers documents 9, 10 and 12.

This confidentiality element is essential to the work of international organisations active in the oversight of nuclear activities. A certain level of discretion is needed to allow mutual trust between Parties and the development of a free and effective discussion.

Moreover, inspections and peer reviews of nuclear facilities depend of the openness and transparency demonstrated by the receiving Party. Only full accessibility allows for an accurate assessment of the nuclear facilities safety. Some countries may be reticent to assist international peer reviews if they cannot trust that the conclusions will be discussed between peers and not made public.

Disclosure by the Commission of confidential information in contradiction with international codes of conduct would result in critical damage to the reputation of the European Atomic Energy Community (EURATOM) and of the EU in general in international spheres.

The General Court confirmed that ‘stress tests’ accepted by a third country on a voluntary basis, enable the Commission to gain a better understanding of existing risks, and that it is clearly in the interest of the European Union to maintain such quality relations and promote the highest level of EU nuclear safety standards in neighbouring countries. Full disclosure to third parties would deteriorate the quality relations established, with all the resulting implications for nuclear safety.⁷

The Commission notes that document 14 is part of a similar evaluation of the Belarus NPP and that the exception retained by the Court in the context of the Ukrainian NPP is equally applicable to the current request for access to document.

4. OVERRIDING PUBLIC INTEREST

The exceptions to the right of access provided for in Articles 4(2) and 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested

⁷ Judgment of the General Court of 27 February 2018 in case T-307/16, CEE Bankwatch Network v Commission, paragraph 95

documents. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden.

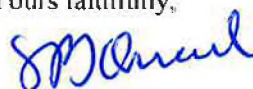
In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

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
Transparency, Document Management and Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

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

Yours faithfully,



Stephen QUEST

Enclosure: Annex A: List of documents - 10 documents fully or partially disclosed