



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate A - Policy coordination
A.4 - Legal Issues & Enforcement

Brussels
MOVE.A.4

Mr. Belen Belanya
Corporate Europe Observatory
Rue d'Edimbourg 26
1050 Brussels
Belgium

*sent by e-mail with request for
acknowledgement of receipt: [ask+request-
9315-135e8752@asktheeu.org](mailto:ask+request-9315-135e8752@asktheeu.org)*

Subject: Your application for access to documents – GESTDEM 2021/2553

Dear Sir,

We refer to your application dated 12 April 2021 in which you make a request for access to documents, registered on 21 April 2021 under the abovementioned reference number, as well as to our holding reply of 6 May 2021.

You request access to the following:

“minutes of the following meeting: ENEL SpA 01 Jul 2020 - Commissioner Adina-Ioana Vălean / Filip Alexandru Negreanu Arboreanu - Sustainable and Smart Mobility and EU Recovery Fund”.

Having examined your request, we have identified the following documents as falling within the scope of your application:

- E-mail from a representative of Enel S.p.A. to a Member of the Cabinet of Commissioner Vălean on 4 March 2020, concerning a request for a meeting between representatives of Enel S.p.A. and Commissioner Vălean;
- E-mail exchange between a representative of Enel S.p.A., staff and Members of the Cabinet of Commissioner Vălean between 3 April and 19 June 2020.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereinafter ‘Regulation (EC) No 1049/2001’), we have come to the

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.05.2001, p. 43).

conclusion that the documents may be partially disclosed. Some parts of the documents have been redacted, as their disclosure is prevented by the exception to the right of access laid down in Article 4(1)(b) of this Regulation.

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 and contact information of Commission staff members not pertaining to the senior management;
- the names and contact details of other natural persons;
- other information relating to identified or identifiable natural persons, in particular references to functions of natural persons, 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.

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/EC² (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 data³.

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 applicable⁵.

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

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 (OC 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.

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 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 the 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 disclosure of the personal data concerned.

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 within 15 working days upon receipt of this letter to the Secretary-General of the Commission, at the following address:

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.

The COVID-19 outbreak undoubtedly has an impact on the process of handling access to documents requests under Regulation (EC) No 1049/2001. Given the large-scale teleworking of the Commission services, all replies, which should normally be sent via registered post, currently are sent only by e-mail. In this regard, we kindly ask you to confirm receipt of this email.

Yours faithfully,

Barbara JANKOVEC
Head of Unit

Enclosure: E-mail from a representative of Enel S.p.A. to a Member of the Cabinet of Commissioner Vălean on 4 March 2020, concerning a request for a meeting between representatives of Enel S.p.A. and Commissioner Vălean (redacted)

E-mail exchange between a representative of Enel S.p.A., staff and Members of the Cabinet of Commissioner Vălean between 3 April and 19 June 2020 (redacted)