



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

The Director-General

Brussels, 2 February 2022
MOVE.DDG1.B.4/

Ms. Francesca CICCULLI
Investigative Reporting Project Italy
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00192 ROMA
Italy

***By registered email with
acknowledgment of receipt:***
ask+request-10382-
02d3dc0f@asktheeu.org

Dear Madam,

Subject: Your application for access to documents – GESTDEM 2021/8108

We refer to your e-mail dated 13 December 2021 in which you make a request for access to documents, registered on 15 December 2021 under the abovementioned reference number, as well as to our holding reply dated 12 January 2022.

You request access to the following documents:

“For the period between 2019 to date:

1. a list of all meetings and/or calls between the Directorate-General for Mobility and Transport and the GD4S lobby group, including any Cabinet Members and/or officials, during which projects on synthetic fuels and/or projects on hydrogen were discussed.

The list should include: date, individuals attending and organisational affiliation, as well as the issues discussed;

- all minutes and other reports of these meetings and/or calls;

- all documents prepared for the purpose of the meetings issued both in preparation and after the meetings took place.

- all correspondence, including attachments (i.e. any emails, mail correspondence or telephone call notes) between the Directorate-General for Mobility and Transport including any Cabinet Members and/or officials, and GD4S lobby group discussing “synthetic fuel” and/or “hydrogen”.

2. all documents sent by the GD4S lobby group to the DG Mobility and Transport related to their synthetic fuel projects and/or their hydrogen projects”.

We consider your request to cover documents held up to the date of your initial application, i.e.. 13 December 2021.

Having examined your request, as regards the requested list of meetings, we must first note that Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereinafter ‘Regulation (EC) No 1049/2001’) applies only to existing documents in the possession of the institution, in accordance with its Article 2(3) – that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union. We would like to refer in this respect to the judgment of the Court of Justice in Case C-127/13 P – *Strack v European Commission*, according to which ‘[n]either Article 11 of Regulation 1049/2001 nor the obligation of assistance in Article 6(2) thereof, can oblige an institution to create a document for which it has been asked to grant access but which does not exist’², and to the judgment of the Court in Case C-491/15 P – *Typke v European Commission*, where it held that ‘the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and [...] Regulation No 1049/2001 may not be relied upon to oblige an institution to create a document which does not exist. It follows that, [...], an application for access that would require the Commission to create a new document, even if that document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001’³.

In the present case, while the Directorate-General for Mobility and Transport keeps records of meetings of the Director-General, of the Commissioner and of the members of her Cabinet with organisations and self-employed individuals, which are publicly available on the transparency register website⁴, it does not hold any individual lists of meetings with the specific organisation concerned by your request in addition to the publicly available information on the transparency register. In this respect, we would like to underline that compiling lists of meetings in order to fulfil your request would equal to the creation of new documents within the meaning of the above-mentioned case-law, as neither can such a list be extracted from a database by means of a normal or routine search. We cannot therefore fulfil your request as regards the requested list of meetings.

¹ OJ L 145, 31.5.2001, p. 43.

² Judgment of the Court of Justice of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 46.

³ Judgment of the Court of Justice of 11 January 2017, *Typke v European Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

⁴ The relevant links to the publicly available lists of meetings are as follows:

- For meetings of Commissioner Vălean with organisations and self-employed individuals: <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=76282059-61de-44b4-a0b9-729043afb1a2>
- For meetings of the members of the Cabinet of Commissioner Vălean with organisations and self-employed individuals: <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=d9a26c6a-8203-4852-b6f4-b3e71f38af90>
- For meetings of Director-General Henrik Hololei with organisations and self-employed individuals: <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=ed82401c-d412-44bd-bdbc-3d0c5d051337>

As regards the other documents mentioned in your request, we have identified the following documents as falling within the scope of your application:

- **Annex 1:** Briefing for Mr. Henrik Hololei's (Director General of DG MOVE) meeting with EBA/GD4S/NGVA on the "Sustainable and Smart Mobility Strategy", to be held on 4 March 2021;
- **Annex 2:** Minutes of the meeting between Mr. Hololei and the representatives of GD4S, NGVA and EBA, held on 4 March 2021 (reference Ares(2021)1662708);
- **Annex 3:** Email from GD4S to the Cabinet of Commissioner Vălean on 3 June 2021, concerning a "Meeting Request + New GD4S White Paper promoting the role of gas networks as key enabler of the EU's energy transition", (reference Ares(2021)3652077), which contains the following annex:
 - **Annex 3.1:** GD4S White paper titled "Gas grids: a key enabler of decarbonisation. GD4S' commitment to deliver on the European Green Deal", dated June 2021;
- **Annex 4:** Email from GD4S to the Cabinet of Commissioner Vălean on 5 October 2021, concerning a meeting request;
- **Annex 5:** Briefing from DG MOVE to Commissioner Vălean concerning a meeting to be held with GD4S on 7 December 2021.

As regards **Annex 3.1**, we have come to the conclusion that this document may be disclosed. It is available through the following link: <https://gd4s.eu/white-paper>.

With regard to all the other documents listed above, we have come to the conclusion that they may be partially disclosed. Firstly, 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;
- other information relating to identified or identifiable natural persons, in particular references to their functions, 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/EC⁵ (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 data⁶.

In its judgment in Case C-28/08 P (Bavarian Lager)⁷, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁸.

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 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

⁵ 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 (OJ L 205 of 21.11.2018, p. 39).

⁶ 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.

⁷ Judgment of 29 June 2010 in Case C-28/08 P, *Commission v Bavarian Lager*, ECLI:EU:C:2010:378, paragraph 63.

⁸ 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.

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 therefore 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.

As regards **Annex 1**, a complete disclosure of this document is also prevented by the exception to the right of access laid down in the second subparagraph of Article 4(3) of this Regulation.

Pursuant to the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001, *“Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure”*.

Indeed, the disclosure of a part of this document at this moment in time would seriously jeopardise the decision-making process of the Commission even after the adoption of the decision it refers to, as it contains preliminary views and opinions for internal use as part of preliminary consultations within the Commission; as the legislative procedure concerning this proposal is still ongoing, the Union institutions must be free to explore all possible options in preparation of their decisions free from external pressure. In addition, the disclosure of such opinions could deter staff from formulating them independently, and without being unduly influenced by the prospect of wide disclosure exposing the institution of which they are part. It is to be noted that the possibility of expressing views independently within the institution is necessary to encourage internal discussions with a view to improving the functioning of the Commission, as well as to contribute to the smooth running of its decision-making process⁹.

The exception laid down in the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in the disclosure of the documents. The Commission services have examined whether there could be an overriding public interest in disclosure. However, we have not been able to identify any other public interest capable of overriding the public interests protected by Article 4(3) of Regulation (EC) No 1049/2001.

Therefore, the exception laid down in the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 applies to a redacted part of Annex 1.

Please note that the 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 it. The European Commission does not assume any responsibility from their reuse.

⁹ Judgment of the General Court of 15 September 2016, Case T-18/15 - *Philip Morris v Commission*, ECLI:EU:T:2016:487, paragraph 87.

Please also note that the disclosed minutes and briefings of meetings were drawn up for internal use under the responsibility of the relevant officials of the Directorate-General for Mobility and Transport. They solely reflect the author's or the service's interpretations of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. They also do not reflect the position of the Commission and cannot be quoted as such.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled 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 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 Brussels,

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,

Henrik HOLOLEI
Director-General

Enclosure: 5 annexes.