EUROPEAN COMMISSION

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DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001[1]

Subject: **Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 – EASE 2022/3924**

Dear Mr Schreiber,

I refer to your e-mail of 21 September 2022, registered on 22 September 2022, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents[2] (hereafter 'Regulation (EC) No 1049/2001').

Please accept our apologies for the delay in providing you with a reply to your request.

1. SCOPE OF YOUR REQUEST

In your initial application of 24 May 2022, addressed to the Secretariat-General, you referred to the announcement made on 25 March 2022 by the President of the European Commission, Ursula von der Leyen, and the President of the United States of America, Joe Biden, on the creation of a joint Task Force on Energy Security[3] (hereafter 'Task Force on Energy Security') and you requested access to the 'documents which contain the following information:

- The list of Task Force [on Energy Security] Members;
- The topics discussed during meetings;

[1] OJ L 345, 29.12.2001, p. 94.
[2] OJ L 145, 31.5.2001, p. 43.
[3] Available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2041

- The involvement of the Task Force [on Energy Security] - notably through emitting recommendations - in any EU legislation or decision.'

Your above-mentioned application for access to documents was handled by the Directorate-General for Energy (hereafter 'DG ENER'), the Commission department that coordinates the work of the Task Force on Energy Security.

In its reply of 21 September 2022, DG ENER mentioned that 'there is no officially adopted list of appointed **Task Force members**' and that '[t]he Task Force is chaired by a representative of the European Commission and a representative of the U.S. government. The two high-level meetings of 28 April 2022 and 22 June 2022 were chaired by Amos Hochstein, (Special Presidential Coordinator, Department of State/White House) and Björn Seibert (Head of Cabinet, President of the European Commission), under the leadership of Ditte Juul Jørgensen (Director-General for Energy, European Commission) and Melanie Nakagawa (Senior Director for Climate & Energy, National Security Council, White House).'

With regard to the **topics discussed during meetings**, DG ENER clarified that the Task Force on Energy Security 'met two times for a high-level meeting (28 April 2022, 22 June 2022), and three times for a technical convening (20 April 2022, 25 April 2022, 30 June 2022). The reply indicates that the outcome of the high-level meetings of 28 April and 22 June 2022 are available online:

- Joint Statement between the United States and the European Commission on European Energy Security, 29 April 2022: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2750;
- Joint Statement by President von der Leyen and President Biden on European Energy Security, 27 June 2022: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_4149.

Furthermore, DG ENER identified the following documents as falling within the scope of your request in relation with the topics discussed during meetings:

1. US-EU Task Force_meeting_agenda_28.04.2022, Ares(2022)5949083
2. US-EU Task Force_meeting_agenda_22.06.2022, Ares(2022)5925971
3. US-EU Task Force_technical convening_agenda_20.04.2022, Ares(2022)6353495
4. US-EU Task Force_technical convening_agenda_25.04.2022, Ares(2022)5949178
5. US-EU Task Force_technical convening_agenda_30.06.2022, Ares(2022)5949406

DG ENER provided full access to documents 1 and 2 and partial access to documents 3, 4 and 5, arguing that parts of these latter documents are covered by the exceptions provided in Article 4(1)(a), third indent (protection of public interest as regards international relations) and Article 4(2), first indent (protection of commercial interests of a natural or legal person) of Regulation (EC) No 1049/2001. More specifically, DG ENER indicated that public access to the names of companies and associations present during those meetings cannot be granted, 'as it would reveal content of on-going

confidential negotiations between the EU and U.S' and that their disclosure 'risk[s] influencing their competitive position vis-à-vis other companies and, as a consequence, risk[s] hampering the willingness of these companies to cooperate with the EU to secure gas supply'.

On the part of your request concerning **the involvement of the Task Force on Energy Security in any EU legislation or decision**, the initial reply provided that 'the Task Force has a political and strategic nature and does not issue conclusions or recommendations. Therefore, the Task Force is not involved in drafting or preparing EU legislation or decisions.'

In the framework of your confirmatory application, you request a review of the initial reply of DG ENER, first on the ground that 'it provided no information on the identity of its members nor on the precise content of the discussions'. In this regard, you argue that '[t]he Commission's refusal to publish a list of members is especially problematic as several companies or associations involved have direct interests in the energy sector and/or benefit from EU energy supply decisions. For example, several Task Force members may also be companies that promote projects that are listed as PCI and/or benefit from accelerated permits.' Concerning the role of the Task Force, you mention that 'as the Task Force discusses issues that are directly related to EU energy security, it holds an indirect influence on EU energy policies'. Lastly, you argue that 'there is an overriding public interest in knowing what companies play a role in defining the EU's energy supply policies and/or advise the bloc on its energy supply' and indicate that '[i]n the current context, as energy drives EU inflation and becomes a preoccupation for all Europeans, but also triggers massive profits for energy companies, knowing the identity of Task Force members appears a basic democratic request and is necessary to help prevent any conflict of interest.'

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

The European Commission has carried out a renewed search for documents falling under the scope of your application. Following this renewed search, the following additional documents have been identified at confirmatory stage up until 21 September 2022, the date of the initial reply from DG ENER and that of your confirmatory application:

1. Invitation to the US-EU Task Force technical meeting of 20 April 2022, Ares(2022)5950017;
2. Briefing for Director-General Ditte Juul Jørgensen ahead of the US-EU Task Force technical meeting of 20 April 2022, Ares(2023)190825;

3. Internal Flash Report US - EU Energy Security Task Force meeting of 20 April 2022, Ares(2023)199094;
4. Invitation to the US-EU Task Force technical meeting of 25 April 2022, Ares(2022)5950045;
5. Briefing for Director-General Ditte Juul Jørgensen ahead of the US-EU Task Force technical meeting of 25 April 2022, Ares(2023)191187;
6. Internal Flash Report US - EU Energy Security Task Force meeting of 25 April 2022, Ares(2023)191542;
7. Briefing for Director-General Ditte Juul Jørgensen, Visit to Atlantic City and Washington (26-30 April 2022), Ares(2023)191414;
8. Invitation to the US-EU Task Force technical meeting of 30 June 2022, Ares(2023)241320;
9. Annex to the Invitation to the US-EU Task Force technical meeting of 30 June 2022, Draft Agenda, Ares(2023)241320;
10. Briefing for Director-General Ditte Juul Jørgensen ahead of the US-EU Task Force technical meeting of 30 June 2022, Ares(2023)191730.

In addition to the documents identified at initial stage by DG ENER, the ten documents listed above were also assessed by the Secretariat-General in the context of your confirmatory application.

In the framework of this assessment, it should be noted first that the Joint Statement between the European Commission and the United States on European Energy Security, dated 25 March 2022, is the sole document that provides information about the composition of the Task Force on Energy Security. It mentions that '[t]he Task Force will be chaired by a representative from the White House and a representative of the President of the European Commission.' As reflected in the Joint Statements that followed the high-level meetings of 28 April 2002 and 22 June 2022, they were chaired by Amos Hochstein, US Senior Advisor for Energy Security, and Björn Seibert, Head of Cabinet of the European Commission President. The rest of the participants were senior officials, e.g., Ditte Juul Jørgensen, Director-General for Energy in the European Commission, Melanie Nakagawa, Special Assistant to the President and Senior Director for Climate and Energy at the National Security Council and senior representatives of the U.S. Department of State, the U.S. Department of Energy, the European Commission Directorate-General for Energy, as well as representatives of the European External Action Service.

The Task Force's technical convenings were chaired by the Director-General Ditte Juul Jørgensen and by a senior representative of the US National Security Council/White House. Other participants were senior representatives of the U.S. Department of State, the U.S. Department of Energy, the European Commission Directorate-General for Energy, representatives of the European External Action Service, Member States' delegates and representatives from the EU and US industry stakeholders. The goal of the technical meetings was to identify any immediate actions that could ease the energy

situation in Europe by offering solutions to replace energy produced from Russian fossil fuels. All these meetings took place virtually. The participating Member States and industry representatives in these convenings were invited depending on the specific topics on the agenda, with the aim of gathering appropriate stakeholders. The U.S. associations and companies have been proposed by the counterparts in the U.S. On the part of the Commission, DG ENER invited mainly relevant European energy associations in order to avoid any unintentional discrimination between individual companies. The associations themselves were identified based on previous contacts during various policy consultations. The individual EU companies that participated in the meetings were designated by the invited associations. Lastly, within the same context, it should be noted that the companies and associations invited to attend the technical convenings are not members of the Task Force on Energy Security. Please refer to the information mentioned above for its composition at high-level and at technical level.

With regard to the documents falling within the scope of your request in relation with the topics discussed during the meetings, and in particular during the high-level meetings, please also refer to the public readouts, accessible on the Commission's website: Joint EU-US Statement on European Energy Security[4] of 28 April 2022 and Readout EU-US Task Force European Energy Security Meeting[5] of 22 June 2022.

Regarding the general objectives of the Task Force on Energy Security, they are twofold: (1) the Task Force aims at expanding U.S. LNG exports to Europe, to replace the rapidly diminishing Russian gas supplies, (2) whilst maintaining climate objectives and reducing the overall demand for natural gas in the very short term. These objectives are well aligned with the approach of RePowerEU Plan[6] to diversify away from Russian gas, save energy and increase more quickly the share of renewables.

In operational terms, via the meetings mentioned above, the Task Force provides a platform for a regular exchange of information and sharing of best practices between the European Commission and the United States on the specific objectives of the Joint Statement. To that end, the Task Force has been monitoring the energy security situation in the EU and its neighborhood, and the progress of reducing dependence on fossil fuels. As presented in the agendas of the meetings above, it has regularly discussed global LNG market situation and market projections, regulatory environment and permitting situation in the US and the EU, the development of the US LNG export capacities, the reinforcement of EU energy infrastructure. In addition, the Commission informed of the ongoing initiatives discussed at the EU level including on the concept of the EU Energy Platform and Joint Purchasing. Furthermore, the Task Force helped through the exchange of information in addressing the emergency energy security objective in the EU and to

4 https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_2750
5 https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_3980
6 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: REPowerEU Plan, COM/2022/230 final, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0230&from=EN

ensure appropriate levels of gas storage ahead of the 2022-23 winter and the following one.

As regards the documents identified by DG ENER in its initial reply, constituting the agendas of the meetings, I can confirm that full access can also be granted to the agendas corresponding to the technical convenings of 20 April 2022, 25 April 2022 and 30 June 2022.

As regards the documents identified at confirmatory stage:

- documents 1, 4 and 8 can be partially disclosed with the sole redaction of personal data, as full disclosure is prevented by the need to protect the privacy and integrity of the individual, in accordance with Article 4(1)(b) Regulation (EC) No 1049/2001.
- Document 2 can be partially disclosed, as full public disclosure is prevented by the application to part of its content of the exceptions provided in the first indent of Article 4(1)(a) (protection of the public interest as regards public security), the third indent of Article 4(1)(a) (protection of public security as regards international relations) and Article 4(1)(b) (protection of the privacy of the individual) of Regulation (EC) No 1049/2001;
- Documents 3 and 6 can be partially disclosed, full public disclosure being prevented by the application to part of their content of the exceptions provided in the first indent of Article 4(1)(a) (protection of the public interest as regards public security), the third indent of Article 4(1)(a) (protection of public interest as regards international relations), Article 4(1)(b) (protection of the privacy of the individual) and the first indent of Article 4(2) (protection of commercial interests) of Regulation (EC) No 1049/2001;
- Documents 5 and 10 can be partially disclosed, full disclosure being prevented by the application to part of their content of the exceptions provided in the third indent of Article 4(1)(a) (protection of public interest as regards international relations) and Article 4(1)(b) (protection of the privacy of the individual) of Regulation (EC) No 1049/2001;
- Document 7 can be partially disclosed, full disclosure being prevented by the application to part of its content of the exceptions provided in the third indent of Article 4(1)(a) (protection of public interest as regards international relations) and Article 4(1)(b) (protection of the privacy of the individual) of Regulation (EC) No 1049/2001 and because a part of this document is out of the scope of the request (the information withheld for being out of the scope of the request concerns other meetings scheduled to take place during the visit to Atlantic City and Washington);
- Document 9 can be partially disclosed because part of its content is out of the scope of the request (the information withheld for being out of the scope of the request sets out the virtual meeting’s connection details).

The above-mentioned exceptions apply therefore to the documents identified at confirmatory stage as follows:

Doc nr	**Public security**	**International relations**	**Personal data**	**Commercial interests**	**Out of scope parts**
	Art. 4(1)(a), 1st indent	**Art. 4(1)(a), 2nd indent**	**Art. 4(1)(b)**	**Art. 4(2), 1st indent**	
1			X		
2	X	X	X		
3	X	X	X	X	
4			X		
5		X	X		
6	X	X	X	X	
7		X	X		X
8			X		
9					X
10		X	X		

Detailed reasons are set out hereunder.

2.1. Protection of the public interest as regards public security

Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards public security'.

As far as the interests protected by virtue of Article 4(1)(a) of Regulation (EC) No 1049/2001 are concerned, the Court of Justice has confirmed that it 'is clear from the wording of Article 4(1)(a) [of Regulation (EC) No 1049/2001] that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests'[7].

The Court of Justice stressed in the *In 't Veld* ruling that the institutions 'must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the exceptions provided for in Article 4(1)(a) of Regulation 1049/2001] could undermine the public interest'[8].

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7 Judgement of the Court of Justice of 1 February 2007, C-266/05 P, *Sison* v *Council*, EU:C:2007:75, paragraph 46.

8 Judgment of the Court of Justice of 3 July 2014, *Council* v *In 't Veld*, C-350/12, EU:C:2014:2039, paragraph 63.

Consequently, 'the Court's review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exception […] relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers'[9].

Moreover, the General Court ruled that, as regards the interests protected by the above-mentioned Article, 'it must be accepted that the particularly sensitive and fundamental nature of those interests, combined with the fact that access must, under that provision, be refused by the institution if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complexity and delicacy that call for the exercise of particular care.

Such a decision requires, therefore, a margin of appreciation'[10]. This was further confirmed by the Court of Justice[11].

Document 2 indicates the Member States participating in the meeting of 20 April 2022 and Documents 3 and 6 outline the interventions of the Member States participating in the meetings of 20 April 2022 and 25 April 2022. Disclosure of the respective parts from these documents would undermine the protection of public security to the extent that they reveal preliminary information on sensitive issues regarding the specific countries which effectively and actively are associated to the work of the Task Force and on their national plans on energy. Therefore, details in this regard discussed during the meetings and reflected in the respective parts of the requested document are of a highly sensitive nature and, if disclosed, could serve to inform third parties of options under consideration regarding the national strategies. This would have an impact on the effectiveness of measures to ensure the security of the gas supply in the present international context and, hence, would negatively affect public security.

In this context, the Secretariat-General would like to remind you that the documents disclosed under Regulation (EC) No 1049/2001 become available to the public at large ('*erga omnes'*), not only to the applicant who requested them. Consequently, public access to the respective parts of the requested documents would pose a risk, in a reasonably foreseeable and not purely hypothetical manner, to the public interest as regards the protection of the public security.

In light of the above, access to the respective parts of Documents 2, 3 and 6 must be refused on the basis of the exception laid down in the first indent of Article 4(1)(a) (protection of the public interest as regards public security) of Regulation (EC) No 1049/2001.

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9 Judgment of the General Court of 25 April 2007, *WWF European Policy Programme* v *Council*, T-264/04, EU:T:2007:114, paragraph 40.

10 Judgment of the General Court of 11 July 2018, *ClientEarth* v *European Commission*, T-644/16, EU:T:2018:429, paragraph 23. See also Judgment of the Court of Justice of 3 July 2014, *Council* v *In 't Veld*, C-350/12, EU:C:2014:2039, paragraph 63.

11 Judgment of the Court of Justice of 19 March 2020, *ClientEarth* v *European Commission*, C-612/18 P, EU:C:2020:223, paragraphs 68 and 83.

2.2. Protection of public interest as regards international relations

The third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of […] the public interest as regards […] international relations […]'.

As mentioned above, the Court of Justice has confirmed that it is clear from the wording of Article 4(1)(a) of Regulation (EC) No 1049/2001 that refusal of access by the institution is mandatory where the disclosure of a document to the public would undermine the interests which that provision protects[12]. The Court furthermore pointed out that the institutions enjoy a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by the exceptions provided for in Article 4(1)(a) of Regulation 1049/2001 could undermine the public interest[13]. As a result, the Court's review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exception relating to the public interest is limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers[14].

Documents 2, 3, 5, 6, 7 and 10 are partially disclosed, in order to protect international relations with the US.

More specifically, Documents 2, 5, 7 and 10 are briefing documents that were drawn up by the relevant European Commission services for internal use in view of the preparation of Director-General Ditte Juul Jørgensen for a meeting on 28 April 2022 with the US counterpart in the Task Force (Document 7) and to chair the Task Force's technical convenings (Documents 2, 5 and 10). These contain critical internal considerations, reflections, and views of the European Commission services on specific issues related to the international context and energy-related situation. They also contain the relevant services' proposed speaking points for the Director-General Ditte Juul Jørgensen and, where applicable and shared by the US counterparts, those of Melanie Nakagawa. It is important to note that briefings are usually drawn up by the European Commission services and made available to a person representing the European Commission to inform him or her of the issues and objectives at political level so that he or she can prepare for and conduct a political discussion.

Documents 3 and 6 are internal reports sent by Commission staff to other Commission staff, summarising the matters discussed in the technical meetings of 20 and 24 April 2022. As documents drawn-up for internal use under the responsibility of the relevant services of DG ENER, they contain frank and critical considerations on specific issues related to the international context and reflect solely the authors' interpretation of the

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12 Judgement of the Court of Justice of 1 February 2007, C-266/05 P, *Sison* v *Council*, EU:C:2007:75, paragraph 46.

13 Judgement of the Court of Justice in *Sison* v *Council*, quoted above, paragraph 34; Judgment of the Court of Justice of 3 July 2014, *Council v In 't Veld*, C-350/12, EU:C:2014:2039, paragraph 63.

14 Judgment of the General Court of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, EU:T:2007:114, paragraph 40.

interventions made and do not set out any official position of the Commission or of any other participants. Full access to these documents would reveal sensitive bilateral exchanges on issues of international and political significance.

Furthermore, it should be noted that the disclosure of redacted passages of the aforementioned documents would put in the public domain the negotiating positions and related internal policy considerations of the EU, and in some cases those of the US. There is a risk thus that the disclosure of this information, which was not intended to be released to the public, would undermine the climate of mutual trust between the European Union and international actors concerned. Their full public release by the Commission would undermine the trust enjoyed by the institution to hold free exchange of views concerning the work it carries out with the US authorities and would negatively affect efforts to build constructive and effective relations with them, thus having a negative impact on our international activity.

The General Court concluded in its judgment in Case T-307/16 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'[15]. This position was confirmed by the judgment in Case T-166/19[16].

According to the same judgment, 'it is not required to establish the existence of a definite risk of undermining the protection of the European Union's international relations, but merely the existence of a reasonably foreseeable and not purely hypothetical risk'[17].

If the information reflected in the documents is made public, this may lead to interferences and speculations by exposing the European Commission's internal views on these topical issues. It would put in the public domain evolving internal policy considerations on strategic directions to address the open issues currently under discussion, thus jeopardising their successful outcome.

Given the preliminary nature of the above-referred assessments, the risk of misinterpretations and the potential repercussions through public opinion, there is therefore a reasonably foreseeable and not purely hypothetical risk that the disclosure of the redacted parts in the briefings and the internal reports could undermine the international relations between the European Union and the US.

In this context, please be reminded that the documents released under Regulation (EC) No 1049/2001 become available to the public at large ('*erga omnes*'), and not only to the applicant who had requested them.

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

16 Judgment of the General Court of 25 November 2020, *Marco Bronckers* v *European Commission*, T-166/19, EU:T:2020:557, paragraph 61.

17 Idem, paragraph 60.

The disclosure of the documents would also generate unwarranted pressures on the European Commission from stakeholders seeking to influence the debate on these issues. The protected information could be used by third countries and third parties having an interest in the discussions to bring undue pressure on the European Commission in support of their own interests, and unduly limit the room for manoeuvre of the European Union on the international stage, hence jeopardising the European Union's international position.

It must be noted that, according to the General Court, the institution is not required to reveal, in the statement of reasons for the confirmatory decision, information whose disclosure would undermine the public interest covered by the exception[18]. If such an obligation existed, the institution, by providing those explanations on the potential uses of the requested information, would itself create a situation in which the public interest protected by the exception would be endangered[19].

Consequently, I must conclude that full access to Documents 2, 3, 5, 6, 7, and 10 needs to be refused under the exception laid down in the third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001.

2.3. Protection of commercial interests of a natural or legal person

Article 4(2), first indent, of Regulation (EC) No 1049/2001 provides that '[t]he 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'.

Article 4(2), first indent of Regulation (EC) No 1049/2001 must be interpreted consistently with Article 339 of the Treaty on the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing 'information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components'. Applying Regulation (EC) No 1049/2001 cannot have the effect of rendering ineffective Article 339 TFEU, over which it does not have precedence.

Documents 3 and 6 are, as mentioned above, internal reports sent by Commission staff to other Commission staff, summarising the matters discussed in the technical meetings of 20 and 24 April 2022.

Several redacted parts from these two documents concern interventions of the organisations and commercial undertakings participating in those meetings regarding their strategic (short-term or long-term) objectives, views on supply, market signals, raw materials, impact of the regulatory framework on their business activities, etc. Therefore, the redacted parts are not disclosed as they contain confidential commercial information

[18] Judgment of 7 February 2018, *Access Info Europe* v *Commission*, T-852/16, EU:T:2018:71, paragraph 114 and the case-law cited therein.

[19] Judgment of 27 November 2019, *Luisa Izuzquiza and Arne Semsrott* v *European Border and Coast Guard Agency*, T-31/18, EU:T:2019:815, paragraph 113.

that is not publicly available. Their disclosure would undermine those undertakings' legitimate interests in protecting their business secrets and corporate strategy information. The release of this information would invariably entail that the representatives of such companies cannot have free and open discussions within the Task Force meetings. In turn, this would be detrimental to the objective of the Task Force, to provide a platform for regular exchange of information.

Consequently, there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the commercial interests of the third parties concerned. I conclude, therefore, that access to certain parts of Documents 3 and 6 must be refused, based on the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

2.4. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of […] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data'.

In its judgment in Case C-28/08 P (*Bavarian Lager*)[20], the Court of Justice ruled that when a request is made for access to documents containing personal data, 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[21] (hereafter 'Regulation (EC) No 45/2001') becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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[22] (hereafter 'Regulation (EU) 2018/1725').

However, the case-law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 'requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of

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20 Judgment of the Court of Justice of 29 June 2010, *European Commission* v *The Bavarian Lager Co. Ltd* (hereafter referred to as *'European Commission* v *The Bavarian Lager* judgment') C-28/08 P, EU:C:2010:378, paragraph 59.

21 OJ L 8, 12.1.2001, p. 1.

22 OJ L 295, 21.11.2018, p. 39.

the Union concerning the protection of personal data, and in particular with […] [the Data Protection] Regulation'[23].

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person […]'.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), 'there is no reason of principle to justify excluding activities of a professional […] nature from the notion of private life'[24].

The documents requested contain personal data such as the names, surnames and functions of persons who are staff members not forming part of the senior management in the Commission and of other persons who do not occupy public functions in national administrations.

The names[25] of the persons concerned, as well as other data from which their identity can be deduced, undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

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 processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data[26]. This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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,

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23 *European Commission* v *The Bavarian Lager* judgment, cited above, paragraph 59.

24 Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others* v *Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

25 *European Commission* v *The Bavarian Lager* judgment, cited above, paragraph 68.

26 Judgment of the Court of Justice of 16 July 2015, *ClientEarth* v *European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your confirmatory application, you do not 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 subjects' legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the 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, 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 the disclosure of the personal data concerned.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that Article 4(1)(a) and Article 4(1)(b) of Regulation (EC) No 1049/2001 do not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

The exception laid down in the first indent of Article 4(2) of Regulation (EC) No 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.

According to the case-law, the applicant must, on the one hand, demonstrate the existence of a public interest likely to prevail over the reasons justifying the refusal of the documents concerned and, on the other hand, demonstrate precisely in what way disclosure of the documents would contribute to assuring protection of that public interest to the extent that the principle of transparency takes precedence over the protection of the interests which motivated the refusal[27].

[27] Judgment of the General Court of 9 October 2018, *Anikó Pint* v *European Commission*, T-634/17, EU:T:2018:662, paragraph 48; Judgment of the General Court of 23 January 2017, *Association Justice & Environment, z.s* v *European Commission*, T-727/15, EU:T:2017:18, paragraph 53; Judgment of the General Court of 5 December 2018, *Falcon Technologies International LLLC* v *European Commission*, T-875/16, EU:T:2018:877, paragraph 84.

In your confirmatory application, you argue that 'there is an overriding public interest in knowing what companies play a role in defining the EU's energy supply policies and/or advise the bloc on its energy supply' and indicate that '[i]n the current context, as energy drives EU inflation and becomes a preoccupation for all Europeans, but also triggers massive profits for energy companies, knowing the identity of Task Force members appears a basic democratic request and is necessary to help prevent any conflict of interest.'

Please note that such general considerations as you mention in your confirmatory application cannot provide an appropriate basis for establishing that the principle of transparency was in this case especially pressing and capable, therefore, of prevailing over the reasons justifying the refusal to disclose the documents in question[28]. I would also like to refer to the *Turco v Council* judgment, where the Court of First Instance explicitly held that the overriding public interest capable of justifying the disclosure of a document covered by this exception must be, as a rule, distinct from the principles of transparency, openness and democracy or of participation in the decision-making process[29]. The reason is that the provisions of Regulation (EC) No 1049/2001 as a whole effectively implement those principles.

Furthermore, the Secretariat-General has not been able, based on its own analysis, to establish the existence of any overriding public interest. In consequence, I consider that no overriding public interest would outweigh the need to safeguard the commercial interests protected by the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting further partial access to the documents requested.

However, for the reasons explained above, no further partial access is possible without undermining the interests described above.

5. REUSE

You may reuse the documents that were produced by the European Commission, in accordance with the Commission Decision on the reuse of Commission documents. You may reuse these documents 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 document. Please note that the Commission does not assume liability stemming from the reuse.

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28 Judgment of the Court of Justice of 14 November 2013, *Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission*, Joined Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 93, Judgment of the General Court of 6 February 2020, *Compañía de Tranvías de la Coruña, SA v European Commission*, T-485/18, EU:T:2020:35, paragraph 81

29 Judgment of the Court of First Instance of 23 November 2004, *Maurizio Turco v Council of the European Union*, T-84/03, EU:T:2004:339, paragraphs 81-83.

6. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Ilze JUHANSONE
Secretary-General

Enclosures: 13

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION