



EUROPEAN COMMISSION  
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The acting Director-General

Brussels,

**Subject: Your application for access to documents**

**Reference GestDem 2022/3193 and 2022/3579**

Dear Mr Pace,

I refer to your applications initially registered on 1 June 2022<sup>1</sup> and 21 June 2022<sup>2</sup> under the above-mentioned reference numbers, in which you made three requests for access to:

*“All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting:*

- *on April 21 between Laszlo Kristoffy and Trans Adriatic Pipeline – request 2022/3193.*
- *on June 16 between Olivér Várhelyi and Trans Adriatic Pipeline – request 2021/3579”.*

I also refer to our emails of 30 June 2022<sup>3</sup> and 13 July 2022<sup>4</sup>, by which we informed you that an extended time limit was needed for the purpose of internal consultations regarding your requests; and to our email of 20 July 2022<sup>5</sup> regarding the joint treatment of your requests for reasons of efficiency and consistency, considering that the internal consultations were with the same interlocutors.

Based on the above description of your requests, we have identified the following three documents as falling under the scope of your request:

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<sup>1</sup> Ref. Ares(2022)5472816.

<sup>2</sup> Ref. Ares(2022)5472968.

<sup>3</sup> Ref. Ares(2022)5472857.

<sup>4</sup> Ref. Ares(2022)5472987.

<sup>5</sup> Ref. Ares(2022)5472911.

Mr Barnaby Pace  
Global Witness, Rue Belliard 53,  
1000, Bruxelles, Belgique

By email only:  
ask+request-11554-38ef4552@asktheeu.org

1. Briefing for Head of Cabinet Laszlo Kristoffy for the meeting with Trans Adriatic Pipeline, 21 April 2022, CAB VARHELYI/920.
2. Briefing for Commissioner Oliver Varhelyi's meeting with Trans Adriatic Pipeline, 15 June 2022, CAB VARHELYI/1025.
3. Report of the meeting of 21 April 2022 between Head of Cabinet Laszlo Kristoffy for the meeting with Trans Adriatic Pipeline, Ares(2022)5305428.

Having examined these documents under the provisions of Regulation (EC) No 1049/2001<sup>6</sup>, I have decided that:

- Wide access can be granted to documents 1 and 2 as full disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(a), third indent (protection of the public interest as regards international relations), Article 4(2), first indent (commercial interests of a natural or legal person, including intellectual property), Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001;
- Wide access can be granted to document 3, as full disclosure is prevented by the exception to the right of access laid down in Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001;

The justifications are as follows:

### **1. Protection of the public interest as regards international relations**

Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 provides that the 'institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations [...]'.

As per settled case-law, 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'<sup>7</sup>.

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'<sup>8</sup>.

The full public disclosure of the documents identified as falling under the scope of the request would severely affect the international relations between the European Union and Azerbaijan, considering that the energy sector and the gas supply in particular, it is at the moment a very sensitive topic due to the uncertainties created by the current geopolitical context.

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<sup>6</sup> 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, Official Journal L 145 of 31 May 2001, p. 43.

<sup>7</sup> Judgment of 3 July 2014, *Council v In 't Veld*, C-350/12, paragraph 63.

<sup>8</sup> Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 40.

The listed documents were drafted for internal purposes. Disclosing such documents, which were not designed for external communications purposes, might lead to misunderstandings and/or misrepresentations by the public.

Against this background, there is a risk that full disclosure of certain documents would undermine the protection of the public interest as regards international relations. I consider this risk as reasonably foreseeable and non-hypothetical, given the sensitivity of the issue and the relevance of the above-referred information in the current context of the energy market.

## **2. Protection of the commercial interests of a natural or legal person, including intellectual property**

Article 4(2), first indent, of Regulation (EC) No 1049/2001 provides that ‘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’.

Some of the identified documents contain sensitive commercial data belonging to third parties, which are not public, and their disclosure would undermine the integrity of financial operations of the entities they belong to. I refer in particular to future operations and planned investments.

The exception of Article 4(2), first indent, of Regulation (EC) No 1049/2001 has to be read in light of Article 339 of the Treaty on the Functioning of the European Union, which requires staff members of the European Union institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy.

Public access to the above-mentioned information would undermine the commercial interests of the third parties concerned. Therefore, I conclude that access to this information should be refused.

## **3. Protection of the privacy and the integrity of the individual**

Complete disclosure of the documents is partly 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. In particular, these documents contain the names, of Commission staff members not pertaining to the senior management, as well as of staff members of other organisations.

Article 9(1)(b) of the Data Protection Regulation<sup>9</sup> 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.

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<sup>9</sup> 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 295, 21.11.2018, p. 39.

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.

### **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 its 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 & Access to Documents (SG.C.1)

BERL 7/076

B-1049 Brussels

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu).

Yours sincerely,

[e-signed]

Maciej Popowski

- Encl.:
1. Briefing for Head of Cabinet Laszlo Kristoffy for the meeting with Trans Adriatic Pipeline, 21 April 2022, CAB VARHELYI/920
  2. Briefing for Commissioner Oliver Varhelyi's meeting with Trans Adriatic Pipeline, 15 June 2022, CAB VARHELYI/1025
  3. Report of the meeting of 21 April 2022 between Head of Cabinet Laszlo Kristoffy for the meeting with Trans Adriatic Pipeline, Ares(2022)5305428