



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Director-General

Brussels,
DJ/VM/ener.a.3.dir(2019)1809304

By registered letter with acknowledgment of receipt

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Subject: Your application for access to documents - GestDem 2018/1964

Dear Ms Eberhardt,

I refer to your e-mail dated 5 April 2018 in which you make a request for access to documents, registered on 06 April 2018 under the above mentioned reference number.

You request access to the following documents:

- 1) a list of meetings of DG Energy officials and/or representatives (including the Commissioner and the Cabinet) and representatives of the Energy Charter Secretariat (since January 2017);
- 2) minutes and other reports of these meetings;
- 3) all correspondence (including emails) between DG Energy officials and/or representatives (including the Commissioner and the Cabinet) and representatives of the Energy Charter Secretariat (since January 2017);
- 4) a list of meetings between DG Energy officials and/or representatives (including the Commissioner and the Cabinet) and representatives of EU member states and/ or other Commission departments, in which the modernisation of the Energy Charter Treaty (ECT) was discussed (since January 2017);
- 5) minutes and other reports of these meetings.

As per your request regarding documents as described under 1), 2), 4) and 5) above, as we have informed you (see email from 12/07/2018) the Commission does not hold any documents that would correspond to the description given in your request. Information with regard to meetings held by the Commissioner and members of his Cabinet with organisations and self-employed individuals is however made available on the Commissioner's website:

https://ec.europa.eu/commission/commissioners/2014-2019/arias-canete_en#calendar

As per your request regarding documents as described under 3) above, as we have informed you (see email from 12/07/2018), after more research, a number of documents have been found which could correspond to the description in your request. Therefore, we are able to reply to your application concerning the following documents covering the period 1.1.2017-5.4.2018:

No.	Type	Date	Author/Sender	Registration No
I.	Email: Energy Charter Update	23.05.2018	Urban RUSNAK	Ares(2020)1385663
II.	Email: Letter from Dr Urban Rusnak, Secretary of the Energy Charter Secretariat	22.05.2018	Urban RUSNAK	Ares(2020)1386883
III.	Proposal on expansion of the EU4Energy Project to Central Asia	29.06.2018	Energy Charter Secretariat	Ares(2020)1387513
IV.	Communications between third countries' representatives and EC.	28.06.2017- 10.08.2017- 04.12.2017	Turkmenistan Kyrgyz Republic Uzbekistan	Ares(2020)1387726
V.	Email: Energy Charter Treaty updates	26.10.2017	Energy Charter Secretariat Urban RUSNAK	Ares(2020)1387866
VI.	StG 106 REV-draft Ashgabat Energy Charter Declaration	23.10.2017	Energy Charter Secretariat	Ares(2020)1388121
VII.	Email: Summary Record of the Strategy Group 19-20 October 2017	27.10.2017	Energy Charter Secretariat Urban RUSNAK	Ares(2020)1388412
VIII.	Email: Energy Charter PoW and Summary Record	27.10.2017	Energy Charter Secretariat Urban RUSNAK	Ares(2020)1388652
IX.	Attachment : Programme of Work for 2018-2019	27.10.2017	Energy Charter Secretariat Urban RUSNAK	Ares(2020)1388806

X.	Email: Meeting with EIB/EBRD Energy Charter Secretariat on energy investment risk assessment	20.11.2017	ENER	Ares(2020)1389028
XI.	28 th Meeting of the Energy Charter Conference –Mess No 1354/17 rev 4 Agenda	23.11.2017	Energy Charter Secretariat	Ares(2020)1389164
XII.	Email: International Energy Charter 12 March	08.03.2018	Energy Charter Secretariat Urban RUSNAK	Ares(2020)1389294

Following an examination of the documents listed above under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the document originators, whom we have consulted, I am glad to inform you that full access can be granted to document III listed above. A copy of document III is enclosed.

However, I regret to inform you that your application cannot be granted for documents I, II, IV, V, VI, VII, VIII, IX, X and XII listed above. Disclosure of these documents would undermine the protection of the public interest as regards international relations within the meaning of Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001. The non-disclosed documents contain information the disclosure of which would reveal the internal information sent in confidence and some positions of countries and their disclosure could undermine relations between the Energy Charter Secretariat and Contracting Parties, including the European Union and its Member States. Furthermore, since the entirety of these documents is covered by the above mentioned exception, it is not possible to partially disclose them in accordance with Article 4(6) of Regulation (EC) No 1049/2001.

Partial access can be granted for document XI listed above, subject only to the redaction of personal data, in particular the names and e-mail addresses of individuals not occupying senior management positions. A redacted copy is enclosed.

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 (EC) No 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/EC¹ ('Regulation 2018/1725').

¹ Official Journal L 205 of 21.11.2018, p. 39.

In its judgment in Case C-28/08 P (Bavarian Lager)², the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable³.

Pursuant to Article 9(1)(b) of Regulation 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'.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 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 disclosure of the personal data concerned.

In accordance with Article 7(2) of Regulation 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 Secretary-General of the Commission at the following address:

European Commission
Secretary-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

Yours sincerely,

(e-signed)

Ditte Juul Jørgensen

² Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

³ 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 2018/1725.