



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The Director-General

Brussels,

Subject: Your application for access to documents – Ref GestDem 2020/1119

Dear Ms Eberhardt,

I refer to your application dated 25 February 2020¹, registered on 26 February 2020 under the above mentioned reference number², in which you make a request for access to:

- 1) ‘minutes and other reports of meetings of officials and/or representatives of DG NEAR, in which the Secretary General and/ or other representatives of the Energy Charter Secretariat were present (since January 2019);
- 2) all correspondence (including emails, letters, phone conversations) between DG NEAR officials and/or representatives and the Secretary General and/or other representatives of the Energy Charter Secretariat (since January 2019)’.

I also refer to our subsequent emails dated 18 March 2020 and 8 April 2020, explaining that an extended time limit was necessary to respond to your request, for the purpose of internal consultations and coordination with other Directorates-General treating requests submitted by you³.

We have identified four documents in our possession relevant to your request, namely:

- Document 1: Meeting Report, 3rd Energy Panel, 17 June 2019, Brussels, Belgium;

¹ Ref. Ares(2020)1196331.

² Ref. Ares(2020)1196350 .

³ Ref. Ares(2020)1639225 and Ares(2020)2103591 respectively.

Email: ask+request-7706-7d72b552@asktheeu.org

- Document 2: Meeting of The Eastern Partnership Platform 3 ‘Connectivity, energy efficiency, environment and climate change’ 26 November 2019, Brussels, Belgium;
- Document 3: Notes from the EU4Energy Action Steering Committee meeting, 5 April 2019, Paris, France;
- Document 4: Minutes of the EU4Energy Action Management Group Meeting, 10 December 2019.

Document 1 and 2 are publicly available at the following links respectively:

- https://ec.europa.eu/energy/sites/ener/files/meeting_report_eap_energy_panel_17_june.pdf
- https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/meeting_of_the_eastern_partnership_platform_3.pdf

Having examined documents 3 and 4 under the provisions of Regulation (EC) No 1049/2001⁴, I decided that access can be granted to them subject to:

- redaction of personal data on the basis of Article 4(1)(b) (protection of the privacy and integrity of the individual); and
- redaction of parts of the documents whose disclosure would undermine the protection of international relations on the basis of Article 4(1)(a) third indent, of Regulation No 1049/2001.

The justifications are as follows.

1. Protection of the privacy and the integrity of the individual

Complete disclosure of documents 3 and 4 is prevented partly 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 names of staff members of other organisations and partner-country administrations.

Article 9(1)(b) of the Data Protection Regulation⁵ 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.

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

⁴ 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.

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, Official Journal L 295 of 21 November 2018, p. 39.

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.

2. 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 [...]'.⁶

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'⁶.

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'⁷.

The full public disclosure of documents 3 and 4 would seriously undermine international relations between the EU, partner countries and partner organisations. The documents contain information on the performance of beneficiary countries in the context of the EU4Energy Programme, as well as positions expressed by them and partner organisations during relevant meetings. Release of these elements might be negatively perceived and lead to detrimental consequences to EU's relations with interlocutors representing a breach of trust amongst partners.

These documents were drafted for internal purposes. Disclosing such documents, which were not designed for external communications purposes, might lead to misunderstandings and/or misrepresentations regarding the nature of the EU-funded activities.

Against this background, there is a risk that full disclosure of documents 3 and 4 would undermine the protection of the public interest as regards international relations, and I consider this risk as reasonably foreseeable and non-hypothetical.

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 Secretary-General of the Commission at the following address:

⁶ Judgment of 3 July 2014, *Council v In 't Veld*, C-350/12, paragraph 63.

⁷ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 40.

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

Yours sincerely,

[e-signed]

Christian Danielsson

Encl./: Documents 3 and 4