



EUROPEAN COMMISSION

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DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2021/588**

Dear Mr Rinaldi,

I refer to your letter of 12 April 2021, registered on 13 April 2021, by 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 documents² (hereafter ‘Regulation (EC) No 1049/2001’).

Please accept our apologies for the delay in replying to your request.

1. SCOPE OF YOUR REQUEST

On 5 February 2021 you submitted an initial application, in which you requested access to, I quote:

‘For the period between 1 January 2019 to date:

- a list of all lobby and industry meetings and/or calls held by the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, including any Cabinet Members and/or officials, during which “deep-sea mining” and/or “seabed mining” and/or “marine minerals” 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 and/or exchanged during the course of the meetings.

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

- all correspondence, including attachments (i.e. any emails, mail correspondence or telephone call notes) between the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, including any Cabinet Members and/or officials, and any lobby group and/or industry representative discussing “deep-sea mining” and/or “seabed mining” and/or “marine minerals”;

Your application was attributed to the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. The latter identified 7 documents falling under the scope of your initial application:

- 1. Meeting with Royal IHC of 16 January 2019 - Flash report, Energy Intensive Industries and Raw Materials Unit , 17 January 2020, reference Ares (2020) 263845 (hereafter ‘document 1’)
- 2. Raw Materials in international waters requesting a meeting, DEME Group, Cabinet Breton, 22 October 2020, reference Ares (2020) 6029576 (hereafter ‘document 2’).
- 3. Raw Materials in international waters, Cabinet Breton Archives, DEME Group, 28 October 2020, reference Ares (2020) 6029576 (hereafter ‘document 3’).
- 4. Raw Materials in International waters - Meeting report of 25 November 2020, Energy Intensive Industries and Raw Materials Unit , 8 March 2021, reference Ares (2020) 1701406(hereafter ‘document 4’)
- 5. Email from Global Sea Mineral Resources (GSR EU) and DSM, DEME Group, Energy Intensive Industries and Raw Materials Unit , 25 November 2020, reference Ares (2021)1686828 (hereafter ‘document 5’), which includes the following annexe:
 - o 5.1 GSR EU and DSM - attachment, DEME Group, Energy Intensive Industries and Raw Materials Unit, 25 November 2020, (hereafter ‘document 5.1’);
- 6. Reply to GSR EU and DSM, Energy Intensive Industries and Raw Materials Unit, DEME Group, 25 November 2020, reference Ares (2020) 1686602 (hereafter ‘document 6’).

On 19 March 2021 the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs provided you the reply in which it:

- Granted wide partial access to five documents (number 1, 2, 3, 4 and 6) under the basis of the exception in Article 4(1)(b) (protection of personal data) of Regulation (EC) No 1049/2001;
- Granted partial access to two documents (number 5 and 5.1) under the basis of the exceptions in Article 4(1)(b) and Article 4(2), first indent (protection of the commercial interests) of Regulation (EC) No 1049/2001;

In your confirmatory application, you request a review of this position, concerning the partial disclosure of documents number 5 and 5.1.

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 fresh review of the reply given by the Directorate-General or service concerned at the initial stage.

In accordance with Article 4(4) of Regulation (EC) No 1049/2001, the European Commission consulted again the third party – Global Sea Mineral Resources (GSR EU) – on disclosure of the documents originating from it. The latter has agreed with the wider disclosure of the documents.

Following this review and taking into account the outcome of the consultation, I inform you that wide partial access is granted to documents 5 and 5.1, subject only to the redaction of personal data under the basis of the exception of Article 4(1)(b) (protection of personal data) of Regulation (EC) No 1049/2001.

The detailed reasons are set out below.

2.1 Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘the 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*)³, the Court of Justice ruled that when an application 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 data⁴ (‘Regulation (EC) No 45/2001’) becomes fully applicable.

As from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 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/EC⁵ (‘Regulation (EU) No 2018/1725’).

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

³ 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.

⁴ Official Journal L 8 of 12.1.2001, p. 1.

⁵ Official Journal L 205 of 21.11.2018, p. 39.

individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’⁶.

Article 3(1) of Regulation (EU) No 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’⁷.

The requested documents 5 and 5.1 contain personal data such as names, surnames, functions, telephone numbers, electronic addresses of third parties, as well as of Commission officials not holding any senior management position.

Pursuant to Article 9(1)(b) of Regulation (EU) No 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) No 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 of its own motion the existence of a need for transferring personal data⁸.

This is also clear from. Article 9(1)(b) of Regulation (EU) No 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) No 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 establishes that it is necessary to have the data transmitted for a specific purpose in the public interest.

⁶ *European Commission v The Bavarian Lager* judgment quoted above, paragraph 59.

⁷ Judgment of the Court of Justice of 20 May 2003, preliminary rulings in proceedings between *Rechnungshof and Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁸ 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.

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 weighted the various competing interests.

In your confirmatory application, you did not bring elements to establish the necessity of disclosing any of the above-mentioned personal data.

I note that general considerations relating to the public interest in the disclosure of personal data do not establish the need for the transfer of the personal data⁹.

Consequently, I consider that the necessity for the transfer of personal data (through its public disclosure) included in the documents concerned has not been established. 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 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 disclosure of the personal data concerned.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that the exception laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001 does not need to be balanced against any possible overriding public interest in disclosure.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, partial access is granted to the documents in question.

Please note that the documents originate from a third party and 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. The European Commission does not assume any responsibility from the reuse.

⁹ Judgment of the General Court of 25 September 2018, *Psara et al. v European Parliament*, T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraphs 73-76.

5. 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: [2]