



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

The Director General

Brussels, 30/03/2023
ENER.C.2/ZT/oa (2023) 1732759

Ms Pia Eberhardt

By e-mail: ask+request-11841-57f5ac34@asktheeu.org

Subject: Your application for access to documents – GESTDEM 2022/5323

Dear Ms Eberhardt,

I refer to your e-mail of 20 September 2022 in which you make a request for access to documents, registered on the same day under the above-mentioned case number.

A. Scope of request:

You requested access to:

(1) all correspondence (including email, SMS, private twitter and WhatsApp) since 1st January 2022 between Commissioner Simson, and/or her cabinet and/or officials from DG ENER with representatives of German companies and associations, in which the issue of hydrogen was discussed. Companies and associations I am particularly interested in are: Uniper, E.ON, RWE, Linde, Siemens (Energy), Thyssengas, Thüga, Vattenfall (Germany), Wintershal Dea, Open Grid Europe, EnBW, MAN Energy Solutions, Fluxys Deutschland, Shell (Deutschland), Gascade, Ontras, ThyssenKrupp, Bundesverband der Energie- und Wasserwirtschaft (BDEW), Zukunft Gas, DVGW (Deutscher Verein des Gas- und Wasserfachs), DENA (Deutsche Energieagentur), BDI (Bundesverband der deutschen Industrie), BDA (Bundesverband der dt. Arbeitgeberverbände) and DIHK (Deutscher Industrie- und Handelskammertag);

(2) any briefings prepared for Commissioner Simson, and/or her cabinet and/or officials from DG ENER for meetings since 1st January 2022 with representatives from the above mentioned companies and associations, in which the issue of hydrogen was discussed;

(3) list of meetings since 1st January 2022 between Commissioner Simson, and/or her cabinet and/or officials from DG ENER with with representatives from the above mentioned companies and associations, in which the issue of hydrogen was discussed.

(4) minutes of the meetings mentioned above

Please note that, at this stage, we can only provide you with documents held by the Directorate-General for Energy, while exchanges and correspondence between Ms Kadri Simson, Commissioner for Energy, and other stakeholders are not included herein. In this regard, your request remains open for any relevant documents that could be supplied at a later stage.

B. Identification and assessment of the relevant documents:

Your application concerns the following documents that fall under the category “correspondence”.

	Date	Title	Stakeholder	ARES reference	Release	Reason under Regulation 1049/2001
1.	04 February 2022	Statement on the open letter “Phasing out new fossil-fuel based boilers is vital to achieving the EU’s climate commitments”	DVGW	Ares(2022)842143	Yes (redaction of personal data)	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data)
2.	10 March 2022	Email from BDEW	BDEW	Ares(2022)1856318	Yes (redaction of personal data)	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data)
3.	10 March 2022	Attachment to the email	BDEW	Ares(2022)1856318	Yes (redaction of personal data)	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data)
4.	24 March 2022	Email from RWE	RWE	Ares(2022)8767313	Yes (redaction of personal data)	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data)
5.	24 March	Attachment to the email	RWE	Ares(2022)8767313	Yes	N/A

	2022					
6.	20 April 2022	Reply to the email from BDEW from 10 March 2022, registered under Ares(2022)1856318	BDEW	Ares(2022)3115416	Yes (redaction of personal data)	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data)
7.	4 May 2022	Email from BDEW (2)	BDEW	Ares(2022)3460591	Yes (redaction of personal data)	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data)
8.	4 May 2022	Attachment to email (2)	BDEW	Ares(2022)3460591	Yes	N/A
9.	20 June 2022	[Reply] Letter on behalf of Sasol, Linde, Enertrag & Hydrogen raising their concerns related to an upcoming Delegated Act (DA) to the EU Renewable Energy Directive (RED) and calling for the unlocking of a large-scale sustainable aviation fuel production	Linde	Ares(2022)4533085	Yes (redaction of personal data)	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data)
10.	06 July 2022	Meeting request - Green Wilhelmshaven	Uniper	Ares (2023)13627	Yes (redaction of personal data)	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data)

Below you can find a list of all the meetings that took place since 1 January 2022, that fall within the scope of your application:

1. Meeting with ENBW on EC proposals H2/gas decarbonisation package
2. Flash Report CCE Task Force Meeting
3. Meeting with EnBW and Netze BW

Moreover, the following documents held by the Directorate-General for Energy and related to the above listed meetings fall under your request:

	Date	Meeting Report	Release	Reason under Regulation 1049/2001
11.	4 February 2022	Meeting with ENBW on EC proposals H2/gas decarbonisation package	Partial	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data) and Article 4(2) point 1 of Regulation (EC) 1049/2001 (protection of the commercial interests of a natural or legal person, including intellectual property)
12.	4 May 2022	Flash Report CCE Task Force Meeting	Yes (redaction of personal data)	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data)
13.	14 June 2022	Meeting with EnBW and Netze BW	Partial	Article 4(1)(b) of Regulation (EC) 1049/2001 in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 (for personal data) and Article 4(2) point 1 of Regulation (EC) 1049/2001 (protection of the commercial interests of a natural or legal person, including intellectual property)

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that the documents titled “*Meeting with ENBW on EC proposals H2/gas decarbonisation package*” (number 11) and “*Meeting with EnBW and Netze BW*” (number 13) may only be partially disclosed. Some parts of the document have been blanked out as their disclosure is prevented by the exception to the right of access laid down in Article 4(2) point 1, since their disclosure would undermine the protection of the commercial interests of the legal person in question. The information included in these parts of the documents, contains data on transactions and costs; this information is regarded as commercially sensitive, and its disclosure would likely cause substantial harm to the legal person in question.

The exception to the right of access provided for in Article 4(2) point 1 of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested document. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either.

In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

With regard to documents number 11 and 13 referred to above as well as to the other documents listed above (under numbers 1-4, 6, 7, 9, 10 and 12), a complete disclosure is 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, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons.

Article 9(1)(b) of the Data Protection Regulation¹ 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, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) 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.

The documents disclosed were drawn up for internal use under the responsibility of the relevant officials of the Directorate-General for Energy. They solely reflect the author's interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer, which was not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

Finally, we would like to draw your attention to the fact that, when it comes to point (2) of your request (*any briefings prepared for Commissioner Simson, and/or her cabinet and/or officials from DG ENER for meetings since 1st January 2022 with representatives from the above mentioned companies and associations, in which the issue of hydrogen was discussed*), the Commission does not hold any documents that would correspond to the description given in your application.

Given that no such documents, corresponding to the description given in your application for this point, are held by the Commission, the Commission is not in a position to fulfil your request.

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 this position.

¹ 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.

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
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

Yours sincerely,

Ditte Juul Jørgensen

Annexes:

1. Statement on the open letter “Phasing out new fossil-fuel based boilers is vital to achieving the EU’s climate commitments”;
2. Email from BDEW (10 March 2022);
3. Attachment to the previous email;
4. Email from RWE;
5. Attachment to the previous email;
6. Reply to the email from BDEW from 10 March 2022, registered under Ares(2022)1856318;
7. Email from BDEW (2) (4 May 2022);
8. Attachment to the second email from BDEW;
9. [Reply] Letter on behalf of Sasol, Linde, Enertrag & Hydregen raising their concerns related to an upcoming Delegated Act (DA) to the EU Renewable Energy Directive (RED) and calling for the unlocking of a large-scale sustainable aviation fuel production;
10. Meeting request - Green Wilhelmshaven;
11. Report- meeting with ENBW on EC proposals H2/gas decarbonisation package;
12. Flash Report CCE Task Force Meeting;
13. Report - meeting with EnBW and Netze BW.