



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

The Director-General

Brussels
MOVE.DDG1.B.4/

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Dear Ms Bounfour,

Subject: Your application for access to documents – EASE 2023/0366

We refer to your request for access to European Commission documents registered on 19 January 2023 under the above-mentioned reference number.

You request access to the following documents:

- 1. All briefings, minutes of meetings, and correspondence (including email, SMS, private twitter and WhatsApp) since January 1st 2021 between representatives of Repsol, S.A, or PR companies or law firms representing , Repsol, S.A, and Commissioner Adina Vălean, and/or members of her cabinet and/or officials from DG Move, in which the Euro VII OR OR CO2 regulation for light vehicles OR CO2 regulation for heavy-duty vehicles OR the Renewable Energy Directive (RED) OR ReFuelEU Aviation, OR FuelEU Maritime, OR AFIR directive were discussed.”

I consider your request to cover documents held up to the date of your initial application, i.e. 19 January 2023.

We have identified the following documents as falling within the scope of your application:

- **Annex 1:** E-mail exchange between representatives of TOTAL, staff and Members of the Cabinet of Commissioner Vălean between 11 and 12 March 2021, with the subject matter “*Sustainable Aviation Fuels - Joint position of Neste, Eni, Repsol and Total*”;
- **Annex 2:** Thank you letter from the Head of Cabinet of Commissioner Adina Vălean to Neste, Eni, Repsol and Total dated 21 April 2021;

- **Annex 3:** E-mail exchange between a representative of Repsol and a DG MOVE official concerning information about the REDII Delegated Act on renewable fuels of non-biological origin (RFNBOs), dated between 21 December 2021 and 5 January 2022;
- **Annex 4:** E-mail from a representative of Repsol dated 10 March 2022, concerning a request for a meeting on Hydrogen Ambition 2030, and the flash note of the meeting held on 18 March 2022, being that the e-mail contains the following attachment:
 - **Annex 4.1:** Presentation of Repsol concerning Hydrogen Business Strategy.

Having analysed the documents listed above, we have come to the conclusion that Annex 4.1. may be disclosed. Please find enclosed a copy of this document.

Concerning all the other documents listed above, we have come to the conclusion that they may be partially disclosed. A complete disclosure of the identified documents 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 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾ (hereinafter ‘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;
- other information relating to identified or identifiable natural persons, in particular references to their functions, to the extent that these would enable their identification.

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 (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 ⁽²⁾ (hereinafter ‘Regulation (EU) 2018/1725’, or ‘Data Protection Regulation’).

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ 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 205 of 21.11.2018, p. 39).

In particular, Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data ⁽³⁾.

In its judgment in Case C-28/08 P (Bavarian Lager) ⁽⁴⁾, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable ⁽⁵⁾.

Pursuant to Article 9(1)(b) of Regulation (EU) 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 handling, in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of the Regulation (EU) 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 has established that it is necessary to have the data transmitted for a specific purpose in the public interest. 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 weighed the various competing interests.

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. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal

⁽³⁾ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

⁽⁴⁾ Judgment of 29 June 2010 in Case C-28/08 P, *Commission v Bavarian Lager*, ECLI:EU:C:2010:378, paragraph 63.

⁽⁵⁾ 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 (EU) 2018/1725.

data reflected in these 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 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 the disclosure of their personal data.

As regards **Annex 4**, a part of this document has also been redacted as its disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation (EC) No 1049/2001.

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*”.

The disclosure of the relevant part of Annex 4 would seriously undermine the protection of the commercial interests of the company in question, as putting this information in the public domain would affect its competitive position on the market. More specifically, the redacted part of this document refers to confidential business strategies of the company, the disclosure of which would be detrimental to the achievement of its commercial objectives.

Therefore, we conclude that, pursuant to Article 4(2), first indent of Regulation (EC) No 1049/2001, access cannot be granted to the part of this document that would undermine the commercial interests of the company concerned.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have examined whether there could be overriding public interests for the disclosure of the concerned part of Annex 4. However, we have not been able to identify in this case any other public interests capable of overriding the public interests protected by Article 4(2) of Regulation (EC) No 1049/2001.

Please note that the documents originating from third parties 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, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Please also note that the disclosed flash report was drawn up for internal use under the responsibility of the relevant officials of the Directorate-General for Mobility and Transport. It solely reflects the author’s interpretations of the interventions made and does not set out any official position of the third parties to which the document refers,

which were not consulted on their content. It also does not reflect the position of the Commission and cannot be quoted as such.

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

by asking for a review via your portal ⁽⁶⁾ account (available only for initial requests submitted via the portal account),

or by mail:

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,

Henrik HOLOLEI

Enclosure: 5 annexes

⁽⁶⁾ <https://www.ec.europa.eu/transparency/documents-request>