



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
CLIMATE ACTION
The Director General

Brussels,

By registered mail with acknowledgement of receipt

Paul-Olivier Dehayé
Loorenrank 28
8053 Zurich
Switzerland

Advance copy by email to: ask+request-3008-bc8215f4@asktheeu.org

Subject: Your application under Regulation (EC) No 1049/2001 for access to documents - GestDem 2016/3140

Dear Mr. Dehayé,

I refer to your email dated 7 June 2016, by which, pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter 'Regulation 1049/2001'), you initiated a request, which was registered on 7 June 2016 under reference GestDem 2016/3140.

1. SUBJECT OF YOUR APPLICATION

In your application you asked the Commission to give public access to the full databases behind: the EU transaction Log (EUTL), the Community Independent Transaction Log (CITL) the Union Registry, and the Effort Sharing Decision.

Following an examination of the requested documents under the provisions of Commission Regulation 389/2013 (hereinafter the 'Registry Regulation') and Regulation 1049/2001, I regret to inform you that, as explained in the following section, full access cannot be granted. However, I am pleased to inform you that some of the data contained in the requested documents are already publicly available online. The relevant hyperlinks are listed in Section 3.

2. ANALYSIS AND CONCLUSION

Disclosure of the requested documents (in full) is firstly prevented by the Registry Regulation.

2.1 Confidentiality clauses in the Registry Regulation

These confidentiality clauses laid down in Articles 109(1) and 110(1) of the Registry Regulation apply to the Union Registry, the EUTL and the reported data under the ESD. The CITL being the predecessor of the EUTL, all the data contained in CITL have been included into the EUTL. Accordingly, the same

confidentiality rules apply. As the data from the CITL have been included in the EUTL, the hereinafter references to the 'EUTL' will encompass both, the EUTL and the CITL.

According to these provisions, by default the information included in the Union Registry as well as the EUTL shall remain confidential. It shall only be made available to the public if prescribed by Union law (e.g. Annex XIV to the Registry Regulation which lists all the publicly available data) or national laws provided the objective is compatible with the Registry Regulation.

From these provisions, it is clear that the legislator's intention is to protect some of the information contained in the Union Registry, the EUTL and the ESD databases from being disclosed in full.

Disclosure of the requested documents (in full) is also prevented by Regulation 1049/2001 as exceptions laid down in its Article 4 apply.

2.2 Assessment under the provisions of Regulation 1049/2001

a) Protection of commercial interests (as far as the Union Registry and the EUTL are concerned)

i. assessment of the commercial interests at stake

Use of the exception under Article 4(2), first indent of Regulation 1049/2001 on the grounds of protecting commercial interests is justified with respect to the data available in the Union Registry, and the EUTL. The Union Registry keeps track of the ownership of emission allowances held in electronic accounts while the EUTL checks, records and authorises all transactions between accounts in the Union registry. Any disclosure would allow the instructed public to gather important information of business relevance, which would be harmful for the registered installations/companies.

Indeed, emission allowances constitute commercially sensitive information. They have a clear monetary value as they have a price and can be traded. If data on the accounts of the companies or individuals participating in the EU ETS were to be disclosed, the public would obtain unequivocal information about their position on the market, likely business practices and strategies as well as about their commercial value. Disclosing such information to the public would undermine the commercial position of the companies concerned vis-à-vis their competitors, thus undermine their commercial interests protected by Article 4(2), first indent of Regulation 1049/2001.

ii. Assessment of the overriding public interest

The exception under Article 4(2) of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, first, be a public interest and, second, outweigh the harm caused by disclosure, i.e. outweigh the protected commercial interests.

In your application, you did not put forward any argument that would demonstrate the existence of such an overriding interest.

We have also assessed the potential existence of an overriding public interest, and notably if Article 6(1) of Aarhus Regulation¹ would apply to non-disclosed information. Whereas the requested information concerns ETS emission allowances and the way they are traded, it is not sufficient to qualify information relating to 'emissions into the environment'. Indeed, 'emissions into the environment' are direct or indirect release of substances from installations and/or actual and not merely potential emissions. The only type of information you requested which falls under the scope of Article

¹ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention.

the Aarhus Regulation are the verified emissions data. These are made publicly available on 1st April of each year N+1.

In conclusion, I have not been able to identify any elements capable of overriding public interest over the interests protected by Article 4(2), first indent of Regulation 1049/2001.

b) Protection of privacy and integrity of the individual (as far as the Union Registry, the EUTL and the ESD databases are concerned)

Pursuant to Article 4(1)(b) of Regulation 1049/2001, access to a document or to a part of it has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with the EU legislation regarding the protection of personal data. According to Article 8(b) of Regulation 45/2001, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

The Union Registry, the EUTL and the ESD database gather an enormous amount of personal data falling under the scope of Regulation 45/2001. The necessity of disclosing personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

3. PARTIAL ACCESS

Not all the data contained in databases you requested access to falls under the scope of the aforementioned exceptions. In fact, an important amount of this information is already publicly available. This section provides you with a set of hyperlinks granting you partial access to the requested documents, in accordance with Article 4(6) of Regulation 1049/2001..

In line with the requirements laid down in Article 109(1) of the Registry Regulation, the Commission discloses the relevant information on the following website: EUTL public: <http://ec.europa.eu/environment/ets/>

Please note that for the ESD, the data of the 2013 compliance check are not yet available.

Information on the Union Registry, EUTL and CITL can also be found on our website: http://ec.europa.eu/clima/policies/ets/registry/faq_en.htm

The European Environmental Agency also makes information in this regard public:

- On the Union Registry and the EUTL, please refer to the following link: <http://www.eea.europa.eu/data-and-maps/data/data-viewers/emissions-trading-viewer>
- On the CITL, please refer to the following link: <http://www.eea.europa.eu/data-and-maps/data/european-union-emissions-trading-scheme-eu-ets-data-from-citl-4>

Finally, the emissions of Member States falling under the scope of the Effort Sharing Decision can be found in the national inventory submissions section of the UNFCCC website: http://unfccc.int/national_reports/annex_i_ghg_inventories/national_inventories_submissions/items/94

[92.php](#). Please note that this information will also be published on the EUTL public website at a later stage.

4. 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 this position.

You have fifteen working days in which to do so from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within fifteen working days from the registration of your request, either granting you access to the documents or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to the following address:

European Commission

Secretary-General


Transparency unit SG-B-4

BERL 5/327

B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Jos DELBEKE', enclosed within a circular scribble.

Jos DELBEKE