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Directorate-General for Trade
Directorate G - Trade Strategy and Analysis, Market Access
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By registered letter with acknowledgment of receipt

Ms Pia Eberhardt
Corporate Europe Observatory
Rue d'Edimbourg 26
1050 Brussels
Belgium

Advance copy by email:
ask+request-4067-af71afa6@asktheeu.org

Subject: Your application for access to documents – Ref. GestDem No: 2017/1465

Dear Ms Eberhardt,

I refer to your application of 7 March 2017 in which you made a request for access to documents in accordance with Regulation (EC) No 1049/2001,¹ registered on 07/03/2017 under the abovementioned reference number.

You request access to:

1) a list of meetings of DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of individual companies and/or industry federations such as Business Europe, the European Services Forum (ESF), the Federation of German Industries (BDI) and/or law firms such as Freshfields, White & Case, Herbert Smith and Sidley, in which the Energy Charter Treaty (ECT) was discussed (since January 2016);

2) minutes and other reports of these meetings;

3) all correspondence (including emails) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of companies, business associations and law firms, in which the Energy Charter Treaty (ECT) was discussed (since January 2016).

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

We have identified the following documents, both registered with the same reference number (Ares(2017)1447535):

- An internal Commission e-mail summarising the 'Expert meeting on investment protection standards' organised by Energy Charter Treaty (ECT) Secretariat on 27 January 2017 ("**document 1**"); and
- The presentation slides made by the law firm Volterra Fietta in the above-mentioned meeting ("**document 2**").

I am glad to inform you that access can be granted to the content of the documents. However, some personal data have been withheld in accordance with Article 4(1)(b) of Regulation 1049/2001. Copies of the accessible documents are annexed to this letter.

Article 4(1) (b) of Regulation 1049/2001 provides that “[t]he 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”.

The applicable legislation in this field is 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 data².

The Court of Justice has ruled that “where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data” “the provisions of Regulation 45/2001, of which Articles 8(b) and 18 constitute essential provisions, become applicable in their entirety”³.

Article 2(a) of Regulation 45/2001 provides that “‘personal data’ shall mean any information relating to an identified or identifiable natural person [...]”. The Court of Justice has confirmed that “there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of ‘private life’”⁴ and that “surnames and forenames may be regarded as personal data”⁵, including names of the staff of the institutions⁶.

In accordance with Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish “the necessity of having the data transferred” and additionally “if

² 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 the free movement of such data, OJ L 8, 12.1.2001, p. 1.

³ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 101; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraphs 63 and 64.

⁴ Judgment in *Rechnungshof v Rundfunk and Others*, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

⁵ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

⁶ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

there is no reason to assume that the legitimate interests of the data subjects might be prejudiced". The Court of Justice has clarified that "it is for the person applying for access to establish the necessity of transferring that data"⁷.

I consider that you have not established the necessity of having the aforementioned personal data transferred to you. Moreover, it cannot be assumed on the basis of the information available, that disclosure of such personal data would not prejudice the legitimate interests of the persons concerned. Therefore, these personal data shall remain undisclosed in order to ensure the protection of the privacy and integrity of the individuals concerned.

Please also note that, as document 2 was received by the Commission from Volterra Fietta, it is being disclosed for information only. It does not reflect the position of the Commission and cannot be quoted as such.

In case you would disagree with the assessment that the withheld data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this 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:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
BE - 1049 Bruxelles

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

Yours sincerely,

[e-signed]
Michelangelo Margherita
Deputy Head of Unit

Enclosures:

- Released documents

⁷ *Id.*, paragraph 107; see also judgment in C-28/08 P *Commission v Bavarian Lager*, EU:C:2010:378, paragraph 77.