



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Inter-institutional relations, planning and stakeholders' relations
Head of Unit

Brussels, **04. 07. 2017**
FISMA 02/ED/DB/el/Ares (2017)3824479

Ms Anna Maskell
Corporate Europe Observatory (CEO)
26, rue d'Edimbourg
B - 1050 Bruxelles
Belgium

Registered letter with
acknowledgment of receipt

**Subject: Your application for access to documents: reference number
GESTDEM 2017/2778**

Dear Ms Maskell,

We refer to your e-mail dated 12 June 2017 in which you made a request for access to documents concerning our meetings and correspondence with representatives from the Energy Charter Secretariat (ECT) and the Legal Advisory Committee of the Energy Charter Treaty. Your request covers the period from 1 January 2016 to 22 May 2017.

The only document which we have identified within the scope of your request is the minutes of a meeting held with the ECT secretariat on 10 March 2016. You will find attached a copy of these minutes.

This document does not reflect the position of the Commission as institution and cannot be quoted as such insofar as it reflects the Commission's staff informal position and their interpretation of the views expressed during the meeting.

Names of participants to the meeting have been redacted. 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 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 data¹.

According to Article 8(b) of this Regulation, 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.

¹ Official Journal L 8 of 12.1.2001, p. 1

We consider that the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

In case you would disagree with the assessment that the expunged 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
B-1049 Bruxelles

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

Yours sincerely,



Eric Ducoulombier

Copy: Minutes of a meeting with ECT Secretariat, 10/03/2016

Minutes meeting ECT secretariat 10/03/2016:

Participants: [REDACTED] (ECT secretariat); [REDACTED]
[REDACTED]

The purpose of the meeting was to collect more information about mediation in investor to State disputes. The ECT secretariat explained that they are currently finalising draft guidelines on investment mediation under ECT. The guidelines will be discussed with MS during a meeting scheduled in April. The aim is to have them endorsed by all ECT members in November. The Commission representatives have clearly underlined that the purpose of this informal meeting was not to discuss Commission's view on the work of ECT secretariat on the guidelines but to collect more information to contribute to the internal reflexion in DG FISMA on the value added of mediation in intra EU investor to State disputes.

It resulted from the discussion that in the work undertaken by ECT, several practical obstacles to mediation were identified at national level. The ECT secretariat representatives explained that in some States, if there are no guidelines/framework to refer to, public officials will refuse to enter into mediation.

The ECT secretariat also found out that the OECD contact points go sometimes beyond their formal role and act as mediators in some disputes.

In addition, the ECT secretariat shared their experience on what kind of disputes would be most suitable for mediation: it results from it that more subjective and ambiguous disputes as well as the disputes where the time factor is essential are the most suitable kind of disputes. Mediation is also very adapted to disputes with SMEs, who cannot afford arbitration. The ECT secretariat also expressed their opinion that multi party mediation can be difficult in extra EU context as different investors might have different interests. Finally, the ECT secretariat does not have more data on costs/length and success rate of mediation than what is provided in the papers it produced so far.