



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate F - WTO, Legal Affairs and Trade in Goods
F2: Dispute Settlement and Legal Aspects of Trade Policy
Head of Unit

Brussels,
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Ms Lora Verheecke
on behalf of Friends of the Earth Europe
26 rue d'Edimbourg
1050 Brussels

Email:
ask+request-7115-90d4a273@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2019/4005

Dear Ms Verheecke,

I refer to your request for access documents under Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001") dated 10 July 2019 and registered under the reference GestDem No 2019/4005.

You request access to "*the summary of the meeting between DG Trade and Nord Stream 2 in June 2019*" and "*all email and letter exchanges and phone conversations between representatives of DG Trade and representatives of Nord Stream 2 between 1st June 2017 and today*" [i.e. 10 July 2019].

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

- An email exchange between DG TRADE and Nord Stream 2 representatives and outside counsel between 27 May 2019 and 2 July 2019 (Ares(2019)4518257) (**Document 1**) which contains in attachment four articles and a note summarising Nord Stream 2's legal arguments;
- The report of a meeting between Nord Stream 2 and Commission representatives on 25 June 2019 (Ares(2019)5032625) (**Document 2**);
- A letter from Nord Stream 2 to the Directorate General for Trade (DG TRADE) dated 8 July 2019 (Ares(2019)4372375) (**Document 3**);
- A letter from DG TRADE to Nord Stream 2 dated 26 July 2019 (Ares(2019)4907588) (**Document 4**)

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.

I am glad to inform you that access is granted to the content of these documents. **Documents 3 and 4** are publicly accessible on the website of DG TRADE at <http://ec.europa.eu/trade/policy/accessing-markets/dispute-settlement/investment-disputes/>, where DG TRADE regularly publishes the official exchange of letters between Nord Stream 2 and the Commission in relation to the potential investment claims under the Energy Charter Treaty.

Some personal data have been redacted in **documents 1 to 4**, in accordance with Article 4.1(b) of Regulation 1049/2001. The legal reasoning underlying the protection of these personal data is provided below. In addition, two documents enclosed in **document 2** have been excluded as they fall outside the scope of your request.

Article 4.1(b) of Regulation (EC) No 1049/2001 provides that the institutions can refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual. In its judgment in Case C-28/08 P (*Bavarian Lager*)², 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.

The applicable legislation in this field is Regulation (EU) No 2018/1725, which replaces Regulation (EC) No 45/2001.³ Article 3(1) of Regulation 2018/1725 provides that personal data "*means any information relating to an identified or identifiable natural person [...]*".⁴ Names, signatures, job titles, telephone numbers and/or initials pertaining to staff members of an institution, or outside individuals, are to be considered personal data.⁵

Pursuant to Article 9(1)(b) of Regulation 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 the first condition is fulfilled, namely if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest, the institution concerned will examine whether the conditions under Article 9(1)(b) are satisfied.

In your application, you do not put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, we do not need to

² Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

³ 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.

⁴ 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 (see judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Novak v Data Protection Commissioner*, EU:T:2018:560, paragraphs 33-35).

⁵ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, EU:T:2018:560, paragraphs 43-44.

substantiate in this reply whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Nevertheless, we consider that there are reasons to assume that the legitimate interests of the data subjects concerned could be prejudiced by disclosure of the personal data in the 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 1049/2001, access cannot be granted to the personal data in documents 1 to 4.

In line with the Commission's commitment to ensure transparency and accountability⁶, the names of the Members of Cabinet and of senior management of the Commission (starting from the Director level) are disclosed. Copies of the accessible documents are enclosed.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled 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, Document Management & Access to Documents unit SG-C-1
BERL 7/076
BE - 1049 Brussels

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

Yours sincerely,

[e-signed]

Martin Lukas

⁶ See Commission decisions C(2014) 9051 and C(2014) 9048 of 25 November 2014.