



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

The Director-General

Brussels
MOVE/A4

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Subject: Your application for access to documents – EASE 2023/1115

Dear Ms Cann,

We refer to your request for access to European Commission documents registered on 28 February 2024 under the above-mentioned reference number.

You request access to “*documents related to lobbying on PFAS, per and polyfluoroalkyl substances*”. In particular:

- “1. A list of all meetings/ discussions since 1 January 2023 between officials and or Commissioners with businesses, trade associations, or think tanks where this topic was discussed.*
- 2. Any records, minutes, preparatory briefings, or other notes of these meetings/discussions.*
- 3. All correspondence since 1 January 2023, where this topic was discussed, exchanged between officials and or Commissioners with businesses, trade associations, or think tanks. (...)”*

Please note that this reply relates only to documents held by the Directorate-General for Mobility and Transport (DG MOVE). You mention in your application that you tabled a separate request to other Directorates-General of the Commission. You either received or will receive the replies from the other respective Directorates-General in due course.

We also consider your request to cover documents held up to the date of your initial application, i.e. 28 February 2024.

Having examined your request, as regards the requested list of meetings/discussions, we must first note that Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾ (hereinafter ‘Regulation (EC) No 1049/2001’) applies only to existing documents in the possession of the institution, in accordance with its Article 2(3) – that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union. We would like to refer in this respect to the judgment of the Court of Justice in Case C-127/13 P – *Strack v European Commission*, according to which *‘[n]either Article 11 of Regulation 1049/2001 nor the obligation of assistance in Article 6(2) thereof, can oblige an institution to create a document for which it has been asked to grant access but which does not exist’* ⁽²⁾, and to the judgment of the Court in Case C-491/15 P – *Typke v European Commission*, where it held that *‘the right of access to documents of the institutions applies only to existing documents in the possession of the institution concerned and [...] Regulation No 1049/2001 may not be relied upon to oblige an institution to create a document which does not exist. It follows that, [...], an application for access that would require the Commission to create a new document, even if that document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001’* ⁽³⁾.

In the present case, while DG MOVE keeps records of meetings of the Director-General, of the Commissioner and of the members of her Cabinet with organisations and self-employed individuals, which are publicly available on the transparency register website, it does not hold any individual lists of meetings on the topics concerned by your request in addition to the publicly available information on the transparency register. In this respect, we would like to underline that compiling lists of meetings in order to fulfil your request would equal to the creation of new documents within the meaning of the above-mentioned case-law, as such a list cannot be extracted from a database by means of a normal or routine search. We cannot therefore fulfil your request as regards the requested lists of meetings.

As regards the other documents concerned by your request, we have identified the following documents as falling within the scope of your application:

- **Annex 1:** Email requesting a meeting between DG MOVE and AGC Chemicals, dated 13 December 2023, and a flash report on the meeting, dated 28 February 2024. Ref: Ares(2024)1893966;
- **Annex 2:** Flash report on a meeting held with Chemorous on 30 March 2023. Ref: Ares(2024)1893219;
- **Annex 3:** Flash report on a meeting with RECHARGE on impact of PFAS restriction on battery industry, dated 7 December 2023. Ref: Ares(2024)1893466;
- **Annex 4:** Meeting notes of a meeting held with AEGIR Marine, dated 31 January 2024. Ref: Ares(2024)802119;

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ Judgment of the Court of Justice of 2 October 2014, *Strack v European Commission*, C-127/13 P, EU:C:2014:2250, paragraph 46.

⁽³⁾ Judgment of the Court of Justice of 11 January 2017, *Typke v European Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

- **Annex 5:** Email from UNIFE to DG MOVE on European rail stakeholders' associations (briefing on PFAS), dated 21 February 2024. Ref: Ares(2024)1414818, with the following annexes:
 - **Annex 5.1:** Document on the European rail sector's contribution to the public consultation on the PFAS restriction proposal – Application for derogations from PFAS REACH restriction for specific uses in railways;
 - **Annex 5.2:** Document on the PFAS restriction proposal: a key concern for the European rail stakeholders;
 - **Annex 5.3:** Email from DG MOVE to UNIFE dated 21 February 2024, replying to the initial correspondence from UNIFE;
- **Annex 6:** Email exchanges between EU Focus Group and DG MOVE to set up a meeting with Chemours representatives, dated between 24 August and 4 September 2023. Ref: Ares(2024)1676715;
- **Annex 7:** Email exchanges between EU Focus Group and DG MOVE to set up a meeting with Chemours representatives, and minutes of the meeting held on 19 September 2023. Ref: Ares(2024)1717984;
- **Annex 8:** Email exchange between Sec Newgate EU and DG MOVE on a meeting request, dated between 12 and 19 July 2023, Ref. Ares(2024)1651742, with the following annex:
 - **Annex 8.1:** Presentation from GORE “About GORE, the use of fluoropolymers and why their continued use is justified”, Ref. Ares(2024)1718614, dated 18 July 2023;
- **Annex 9:** Email from ASD on the FPP4EU Collaboration Platform workshop, dated 14 November 2023, Ref. Ares(2024)2568471, with the annex:
 - **Annex 9.1:** Document “FPP4EU Collaboration Platform Workshop: next stages and mapping exercises on PFAS uses”;
- **Annex 10:** Email from ASD on a position on the REACH PFAS Restriction proposal, dated 22 September 2023, Ref. Ares(2024)2568658, with three annexes on:
 - **Annexes 10.1, 10.2 and 10.3:** ASD comments submitted to the ECHA on its REACH PFAS restriction proposal;
- **Annex 11:** Email from ASD dated 26 September 2023, regarding Hydrogen Europe's position paper on PFAS, Ref. Ares(2024)2568705;
- **Annex 12:** Email from ASD dated 16 March 2023 on a REACH PFAS Firefighting foams ban, Ref. Ares(2024)2568770;
- **Annex 13:** Email from FPP4EU to DG MOVE on the FPP4EU Collaboration Platform, dated 14 December 2023, Ref. Ares(2024)1653840, with the following annexes:

- **Annex 13.1:** Draft minutes of the FPP4EU Collaboration platform;
- **Annex 13.2:** Presentation from FPP4EU on the update on ECHA activities, dated 11 December 2023. Ref: Ares(2024)1718859;
- **Annex 13.3:** Presentation from FPP4EU on “Next steps and potential delays”. Ref: Ares(2024)1718859;
- **Annex 13.4:** Presentation from Cefic on “The use of PFAS in chemical plant equipment - an inventory study”. Ref: Ares(2024)1718859;
- **Annex 13.5:** Presentation from FPP4EU on the “FPP4EU compilation of a non-exhaustive list of missed and or partially covered uses”, dated 11 December 2023. Ref: Ares(2024)1718859;
- **Annex 13.6:** Presentation from Concawe: “Study on PFAS applications, potential release, alternatives, and impact of the restriction proposal in refineries and its distribution segment”, dated 11 December 2023;
- **Annex 13.7:** Presentation from EFPIA: “Pharmaceutical Industry – Identified PFAS Uses”, dated 11 December 2023;
- **Annex 13.8:** Presentation from RECHARGE: “PFAS mapping in batteries & the impact of a PFAS restriction on the battery industry”, dated 11 December 2023;
- **Annex 13.9:** Presentation from ESIA: “ESIA submission to ECHA public consultation”, dated 11 December 2023;
- **Annex 13.10:** Presentation from ASD: “REACH Restriction Proposal on PFAS”, dated 11 December 2023;
- **Annex 13.11:** Presentation from ACEA: “PFAS restriction proposal impact on the automotive industry”, dated 11 December 2023;
- **Annex 13.12:** Presentation from Hydrogen Europe: “Hydrogen industry and the proposed PFAS restriction”, dated 11 December 2023;
- **Annex 14:** Email from FPP4EU to DG MOVE on the FPP4EU Collaboration Platform, dated 20 December 2023, Ref. Ares(2024)1653773, with the annex:
 - **Annex 14.1:** Draft minutes of the FPP4EU Collaboration Platform.

Having examined the abovementioned documents, please see attached **Annexes 5.1, 8.1, 13.2, 13.3, 13.4 and 13.5**. With regard the rest of the documents listed above, except for **Annexes 10, 10.1, 10.2, 10.3, 12, 13.1, 13.10 and 14.1**, we have come to the conclusion that they may be partially disclosed.

Firstly, a complete disclosure of these 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, 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 functions of natural persons, 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/EC⁴ (hereinafter ‘Regulation (EU) 2018/1725’, or ‘Data Protection Regulation’).

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 data⁵.

In its judgment in Case C-28/08 P (Bavarian Lager)⁶, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁷.

According to Article 9(1)(b) of the Data Protection Regulation, 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

⁴ 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, 21.11.2018, p. 39).

⁵ 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.

⁶ Judgment of 29 June 2010 in Case C-28/08 P, *Commission v Bavarian Lager*, ECLI:EU:C:2010:378, paragraph 63.

⁷ 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 only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted to you for a specific purpose in the public interest. It is only in that case the European Commission has to examine whether there is a reason to assume that the legitimate interests of the data subject 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 subjects' 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 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 these 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 disclosure of the personal data concerned.

Secondly, as regards certain parts of **Annex 1**, and also **Annexes 10, 10.1, 10.2, 10.3, 12, 13.1, 13.10 and 14.1** in their entirety, I regret to inform you that their 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 this Regulation sets out 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”*.

Having been consulted on the possibility to disclose the abovementioned documents, their respective authors have objected to the disclosure of **Annexes 10, 10.1, 10.2, 10.3, 13.1 and 14.1** and to the disclosure of the redacted parts of **Annex 1**, having motivated their position by arguing that the documents contain confidential commercially sensitive information. Indeed, such documents contain information on business plans or strategies which, if made public, could undermine the achievement of their commercial purposes and objectives. For the same reasons on substance, the Directorate-General for Mobility and Transport has come to the conclusion that access to **Annexes 12 and 13.10** must also be refused.

Consequently, the exception laid down in Article 4(2), first indent of Regulation (EC) No 1049/2001, concerning the protection of commercial interests applies to these documents.

Please note that the exception laid down in Article 4(2) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure. We have examined whether there could be an overriding public interest in the disclosure of these documents. However, we have not been able to identify in this case any other public

interest capable of overriding the interests protected by Article 4(2), first indent of Regulation (EC) No 1049/2001.

We have considered whether partial access could be granted to **Annexes 10, 10.1, 10.2, 10.3, 12, 13.1, 13.10 and 14.1**, pursuant to Article 4(6) of Regulation (EC) 1049/2001. However, given the nature and structure of the documents, and the fact that the third-party authors objected to the disclosure of the entirety of these documents, partial access would have similar effects as the complete access. We have therefore concluded that it is not possible to grant partial access to the requested documents.

Please note that 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 reports and notes of meetings were drawn up for internal use under the responsibility of the relevant services of the Commission. It solely reflects the authors' interpretation of the interventions made and does not set out any official position of the third parties to which the documents refer. It also does not reflect the position of the Commission and cannot be quoted as such.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to submit 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 Secretariat-General of the Commission. You can submit it:

by mail, to:

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,

[Electronically signed]
p.p. Maja BAKRAN MARCICH

Magda KOPCZYŃSKA
Director-General

Enclosure: 27 Annexes