

To:

The European Commission

The Secretary General
Transparency Unit SG-B-4
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Conc.: Confirmatory application GESTDEM 2016/1151

Gdańsk / Göteborg / Brussels, 27 May 2016

Dear Secretary General,

On behalf of Nuclear Transparency Watch, we hereby submit a confirmatory application for access to information under Regulation 1049/2001/EC and Directive 2003/4/EC concerning the information held by the European Commission under Council Directive 2011/70/EURATOM art. 11 to 14.

DG Energy provided us with part of the requested information on 19 May 2016. We would first of all like to thank the European Commission for the effort to bring the delivered information together. Nevertheless, we would like to have the following issues still addressed.

1. According to the letter from DG ENER, under reference ENER.D 1 /JML/cm Ares(2016)S-2800104, we have the right to submit a confirmatory application within 15 days after reception of this letter (which was – as requested – by email on 19 May 2016). However, the letter also states that the content of the information to be submitted to us will be sent by USB stick. As of today we have not received that USB stick, which makes it difficult to formulate in detail our confirmatory application, because part of this application refers to the refusal to give access to information from Member States that is contained on that USB stick. We therefore would like to argue that the Commission should have granted us the possibility to submit a confirmatory application within 15 working days after reception of the USB stick and not the announcement letter. We ask you to allow us the possibility to submit an addendum to this confirmatory application within 15 working days after reception of the USB stick, in case there are reasons to do so.
2. DG ENER granted us access to the Member States' national programmes and reports on radioactive waste as far as they have been communicated to the Commission pursuant art. 13(1) 2011/70/EURATOM and art. 14(1) 2011/70/EURATOM. DG ENER announced to send us this

information by USB stick, and to date we have not received the stick. We had requested the Commission publication of this information on a dedicated website, which would have prevented the delay in postal mail and made the requested information available to the wider public. The Commission argued that it has to negotiate such publication with the Member States. However, disclosure of this information to us under Regulation 1049/2001 has the same effect as publication, that is, an *erga omnes* effect. Once documents are disclosed to one applicant, they become accessible, without further analysis, to any other applicant without such an applicant having to state reasons for his/her request. For that reason, no further negotiation with Member States should be necessary for publication on the internet. We therefore hereby repeat our request that this information be published on a dedicated page on the internet (related to the <https://ec.europa.eu/energy/en/topics/nuclear-energy/radioactive-waste-and-spent-fuel> site).

3. In its letter and the attached overview of the information DG ENER granted access to, there are two cases where a Member State has requested redaction under an exception under art. 4.1 of Regulation 1049/2001/EC. One is a request from Cyprus to withhold information about radioactive waste in the form of disused sources. The given ground for refusal of access is security reasons. Art. 4.1 of Regulation 1049/2001/EC, however, only grants an exception in case disclosure would undermine the public interest as regards public security (art. 4.1 (a)). Although we can imagine that information on the exact location and security measures on the location where disused sources are held could be refused because of public security reasons, information concerning the amounts and constitution of the sources as well as the state they are in is irrelevant for public security. However, this does relate to (potential) emissions, as disused radioactive sources are a form of emission of radioactive substances (they are waste) and their existence forms a potential source of emissions into the environment. For environmental information, as is the case here, Directive 2003/4/EC, implementing the Aarhus Convention on Access of Information, Public Participation and Access to Justice, of which both Cyprus and the EU are signatories, states in art. 4.2 that *“The grounds for refusal mentioned in paragraphs 1 and 2 shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment.”* For that reason we ask you to re-assess the reasons for refusal of access to part of the information submitted by Cyprus.
4. The second non-disclosure concerns a redaction of the Programme submitted by Romania (*“paragraph 2.6.2 including a table with the summary inventory of spent fuel and radioactive waste quantities in Romania was removed on the basis of Article 4 of Reg 1049/2001”*). We first of all want to draw the attention to the fact that this refusal is not accompanied with a justification for refusal, but only in general refers to art. 4.1. of Regulation 1049/2001/EC. According to the *Sweden vs. Commission* judgement¹, Romania should have given clear reasons to justify withholding this information. A general reference to art. 4.1 is for that reason not sufficient. Furthermore, the information in this paragraph concerns the inventory of radioactive waste emissions (incl. spent fuel) in Romania. This is environmental information – these amounts

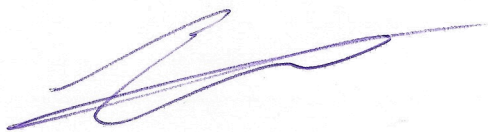
1 Case C-64/05 P *Kingdom of Sweden v Commission* [2007] ECR I-11389

of waste will have to be taken care of by the current, but more importantly by future generations. We refer therefore once more to art. 4.2 of Directive 2003/4/EC, implementing the Aarhus Convention on Access of Information, Public Participation and Access to Justice, of which both Romania and the EU are signatories. This information may simply not be withheld from the public because its disclosure serves a higher public interest. We therefore ask you to re-assess the reasons for refusal of access to this information from Romania.

5. As far as we can judge from the letter from DG ENER (without having yet access to the promised USB stick) the Commission did not fulfil our request for a full break-down overview of all radioactive waste held by each Member State according to radioactive waste category (low-, mid-, high-level waste; short-lived, medium-lived, long-lived waste), as well as totals for each category for the EU. The Commission argues that documents are still being drafted on the basis of the information communicated by the Member States and that these documents will be made public after submission to the European Parliament and the Council. The Commission does not indicate a timeframe for this publication, nor is it specific in whether an aggregated overview of data, as requested by us, will be included in those documents. We therefore ask you to assess whether the (temporary) refusal of DG ENER to provide us with the requested data is indeed warranted and in case it is, to provide us with an indication of when this information will become available to us.

We would like to receive any additional information in digital form (format .pdf, .doc or .odt), sent to the email addresses mentioned below.

Yours sincerely,



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