



Council of the
European Union

Brussels, 6 October 2017
(OR. en)

12651/17

INF 168
API 121

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 24/c/01/17

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 23 June 2017 (but not received by the Transparency service) ([Annex 1](#));
- request for access to documents sent to the General Secretariat of the Council on 8 August 2017 and registered on the same day ([Annex 2](#));
- e-mail from the General Secretariat of the Council sent to the applicant on 11 August 2017 ([Annex 3](#));
- reply from the General Secretariat of the Council dated 8 September 2017 ([Annex 4](#));
- confirmatory application dated 26 September 2017 and registered on 27 September 2017 ([Annex 5](#))



HANOTIAU & VAN DEN BERG

BRUSSELS – SINGAPORE *

AVENUE LOUISIE 480 B.9 LOUIZALAAN (JT TOWER) - BRUXELLES 1050 BRUSSEL
T: +32.(0)2.290.39.00 - F: +32.(0)2.290.39.39 - info@hvdb.com - www.hvdb.com
TVA/BTW/VAT: BE 0475.333.058

Annex A

DELETED

**General Secretariat of the
Council of the European Union**
DG F - Transparency
rue de la Loi/Wetstraat 175
B-1048 Bruxelles/Brussel

Via Post

Arwan
Advocate

23 June 2017

Re: Request for documents in respect of the negotiating history of the Energy Charter Treaty 1994

Dear Sir/Madam,

By way of introduction, my name is **DELETED** a partner at the law firm Hanotiau & van den Berg in Brussels. Our firm is representing the Russian Federation as legal counsel in the Court of Appeal of The Hague concerning the judgment of the Hague District Court of 20 April 2016 in the following three cases: (i) *Yukos Universal Limited v. The Russian Federation*; (ii) *Veteran Petroleum Limited v. The Russian Federation*; (iii) *Hulley Enterprises Limited v. The Russian Federation*.

In pursuance of our representation of our client, we require certain documents pertaining to the negotiating history of the Energy Charter Treaty 1994 ("ECT"). It is for this purpose that I am writing to you, on behalf of Hanotiau & van den Berg. These documents, and the details in respect thereof, are enlisted in the table below:

1. Avocat de la S.C.R.L. HANOTIAU & VAN DEN BERG, société civile à forme commerciale - RPM Bruxelles n° 0475.333.058 / Youtsew (ou de C.V.B.A. HANOTIAU & VAN DEN BERG, besloten vennootschap met beperkte aansprakelijkheid - RPR Brussel n° 0475.333.058 - 2. SPRL/LLP BVBA - 3. Equivalents membres du barreau de Paris / Déjà inscrit au barreau de Paris - 4. Membre du barreau d'Amsterdam inscrit à Bruxelles / Advocaat bij de hof van Amsterdam ingeschreven te Brussel - 5. Membre du barreau de Cologne inscrit à Bruxelles / Advocaat bij de hof van Keulen ingeschreven te Brussel - 6. Membre du barreau de Londres inscrit à Bruxelles / Advocaat bij de hof van Londen ingeschreven te Brussel - 7. Membre du barreau de New York inscrit à Bruxelles / Advocaat bij de hof van New York inscrit à Bruxelles / Advocaat bij de hof van New York ingeschreven te Brussel - 8. Membre du barreau de Québec, du Haut-Canada et de New York inscrit à Bruxelles / Advocaat bij de hof van Québec, du Haut-Canada et de New York ingeschreven te Brussel - 9. Membre du barreau d'Alsace inscrit à Bruxelles / Advocaat bij de hof van Alsace ingeschreven te Brussel - 10. Solicitor-at-law inscrit à Bruxelles / Advocaat bij de hof van New York (New York) ingeschreven te Brussel - 11. Membre du barreau d'Inde (New Delhi) inscrit à Bruxelles / Advocaat bij de hof van Indes (New Delhi) ingeschreven te Brussel - 12. Membre du barreau de Paris inscrit à Bruxelles / Advocaat bij de hof van Paris ingeschreven te Brussel

* Maxwell Chambers - 32 Maxwell Road - # 03-01 Singapore 069113 - Tel: +65 6408 3343 - E-mail: info@maxwellhvdb.com

No.	Document Saving Code	Description	Date
1	1993.07.13-B52-02	Note de Transmission, objet: Charte européenne de l'Energie, SN/3871/93, from Secretariat general du conseil to the delegations of the ad hoc groupe (1993.07.13)	13-7-1993
2	1993.06.21-B50-06	<p>Telecopy - for Clive Jones from Bourgeau (subject document: Summary of EC contacts in Moscow) N. Telefax: 295.01.50. Fax send on 1993.06.21 with documents: doc. nr. 7337/93 (restreint, ENER 66, EUROR 133, NIS 58, date 1993.06.16) and doc. nr. 7337/93 (COR 1 (en) restraint, ENER 66, EUROR 133, NIS 58, date 1993.06.17) from General Secretariat of the Council to the ad hoc working party on the European Energy Charter.</p> <p>This document apparently contains a "debriefing" of a visit to Moscow. During this visit the Chairman of Parliament (Supreme Soviet) clarified to the EU that the governments powers were very limited vis-à-vis those of Parliament.</p>	21-6-1993
3	1993.07.05-B51-04	Note a l'attention de mm. Caccia Dominioni, Busby Ayrar, Waeterloos Goppel (and others) from Hugo Paemen, Commission Des Communautés Europeennes Direction Generale Relations Economiques Exterieures (Nr. 010991), objet: Négociations avec la Russie dans le domaine du commerce des matières nucléaires.	5-7-1993

		Number of receipt Direction Generale Energie: nr. 01597 and received on 1993.07.08. (incl. a Note for the file of S. Bertoletti, note for the file of D.A. Tirr and Statement of A.T. Shatalov at the Plenary Session of 2 July 1993)	
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Our interest in the above documents stems from, *inter alia*, the following reasons:

- (i) The Russian Federation was a signatory to the ECT. The above-mentioned legal cases essentially pertain to an interpretation of the ECT and involve the question of the Russian Federation's signature and conduct surrounding the ECT. To interpret any treaty or international convention, any documents indicative of the legal instrument's *travaux préparatoires* lend immense value to the interpretative exercise. This is especially so before a court of law such as the Court of Appeal of The Hague.
- (ii) Since the ECT was finalised during the European Energy Charter Conference in 1994, and given that the European Union is an independent party to the ECT, the ECT is part of European law. Consequently, the above listed documents qualify as "European Parliament, Council and Commission documents" under Article 255 of the Treaty establishing the European Community, giving Hanotiau & van den Berg a right of access to them.
- (iii) As a law firm with our registered office in Brussels, Belgium, Hanotiau & van den Berg is a legal person entitled to have access to the above listed documents under Article 2(1) of the EC Regulation No. 1049/2001 of 30 May 1991. I, as a partner at Hanotiau & van den Berg, am requesting for the above listed documents, on behalf of the law firm. Our website is <http://www.hvdb.com> and our contact details, along with my email address, are as follows:

HANOTIAU & VAN DEN BERG (HVDB)

IT Tower (9th Floor)
 480 Avenue Louise · B9
 1050 Brussels · Belgium
 T. +32 2 290 39 00
 F. +32 2 290 39 39

E. info@hvdb.com; **DELETED** [@hvdb.com](mailto:DELETED@hvdb.com)

- (iv) Lastly, you may note that Hanotiau & van den Berg had made a request for these documents to the European Energy Charter recently. However, Hanotiau & van den Berg were not given access to them, on the ground that the law firm did not mention the purpose for which we required access to these documents. This was despite informing the Energy Charter about the above-mentioned legal matters in which Hanotiau & van den Berg is representing

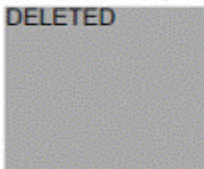
the Russian Federation as counsel, and providing a Power of Attorney from the Russian Ministry of Justice to that effect. This Power of Attorney is also annexed to this letter.

I will be grateful if you would consider our request favourably and provide us with access to the above listed documents (either by way of consultation or copy, preferably the latter). Of course, if the requested documents are not in your position, I will be grateful to have any information in respect of how and before which other institution I can make another request for them.

Our linguistic preferences of the documents are (i) English; (ii) Dutch; and (iii) Russian, provided that the above-mentioned documents are available in any of these three languages.

Yours sincerely,

DELETED



**МИНИСТЕРСТВО ЮСТИЦИИ
РОССИЙСКОЙ ФЕДЕРАЦИИ
(МИНЮСТ РОССИИ)**

МИНИСТР

Житная ул., д. 14, Москва, 119991
тел. (495) 955-59-99, факс (495) 955-57-79
E-mail: info@minjust.ru

24 03 2017 № 06/118-АК

На № _____ от _____

POWER OF ATTORNEY

The Ministry of Justice of the Russian Federation represented by the Minister **DELETED** acting on the basis of the Regulations on the Ministry of Justice of the Russian Federation approved by the Decree of the President of the Russian Federation No. 1313 of 13 October 2004 "Questions of the Ministry of Justice of the Russian Federation", in pursuance of the orders of the President of the Russian Federation and the Government of the Russian Federation on ensuring the protection of the interests of the Russian Federation in the foreign courts in connection with the pursuation to execution of the desicions of the international arbitration of the Permanent Court of Arbitration in the Hague under the claims of the ex-shareholders of the public joint-stock company "Neftyanaya kompaniya "YUKOS" – companies "Hulley Enterprises Limited" (Cyprus), "Yukos Universal Limited" (Island of Men) and "Veteran Petroleum Limited" (Cyprus) to the Russian Federation dated 30.11.2009 and 18.07.2014 authorizes:

DELETED, holding **DELETED** foreign passport **DELETED** issued by Ministry of Foreign Affairs of the Russian Federation **DELETED** on 13.12.2011;

DELETED, holding **DELETED** foreign passport **DELETED** issued by Federal Migration Service **DELETED** on 27.05.2013;

DELETED, holding **DELETED** foreign passport **DELETED** issued by Ministry of Foreign Affairs of the Russian Federation **DELETED** on 07.05.2012;

DELETED, holding **DELETED** passport **DELETED** issued on 12.11.2012;

DELETED, holding **DELETED** passport **DELETED** issued on 01.07.2016;

DELETED, holding **DELETED** passport **DELETED** issued on 21.05.2014;

DELETED holding **DELETED** passport **DELETED**
issued on 18.01.2013;

DELETED holding **DELETED** passport **DELETED**
issued on 30.01.2015

to perform the following acts and deeds on behalf of **THE RUSSIAN FEDERATION** in order to gain access to the archives of the Energy Charter Process which are maintained by the Energy Charter Secretariat at Boulevard de la Woluwe 56, 1200 Brussels, Belgium:

1. To undertake all actions of any kind whatsoever required to gain access to the archives of the Energy Charter; and
2. To review all documentary and/or audio travaux préparatoires or any accessible documents whatsoever of the Energy Charter Treaty in the (digital) archives of the Energy Charter; and
3. To take copies of any (including digital) documents in the archives of the Energy Charter that do not expressly contain a confidentiality/restriction stamp on it; and
4. To take copies of any (including digital) documents in the archives of the Energy Charter with a confidentiality/restriction stamp on it.

This Power of Attorney shall remain valid and binding until 31.12.2017 or until it has been revoked in writing by the Russian Federation.



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HANOTIAU & VAN DEN BERG

BRUSSELS – SINGAPORE *

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 TVA/BTW/VAT : BE 0475.333.058

DELETED

Attacht
 Achttaler

General Secretariat of the Council of
 the European Union
 DG F - Transparency
 rue de la Loi/Wetstraat 175
 B-1048 Bruxelles/Brussel

Also via fax: +32 (0) 22 816 361

8 August 2017

Re: Follow up on the Application dated 23 June 2017 for access to documents in respect of the negotiating history of the Energy Charter Treaty 1994

Dear Sir/Madam,

I am writing in furtherance of my letter dated 23 June 2017 (**Annex A**), in which I had applied for access to certain documents pertaining to the negotiating history of the Energy Charter Treaty 1994 (“**Application**”). This Application, under Article 6 of the EC Regulation No. 1049/2001, was made in my capacity as a partner at the law firm, Hanotiau & van den Berg in Brussels, which represents the Russian Federation as legal counsel in the Court of Appeal of The Hague against the judgment of the Hague District Court of 20 April 2016 in the following three cases: (i) *Yukos Universal Limited v. The Russian Federation*; (ii) *Veteran Petroleum Limited v. The Russian Federation*; (iii) *Hulley Enterprises Limited v. The Russian Federation* (“**Court proceedings**”).

The requested documents in the Application, and the details in respect thereof, are reiterated in the table below, for your convenience:

1. Associé de la S.C.R.L. HANOTIAU & VAN DEN BERG, société civile à forme commerciale - RPM Bruxelles n° 0475.333.058 / Vereniging van de C.V.R.A. HANOTIAU & VAN DEN BERG, beperkte vennootschap met handelsvorm - RPM Brussel n° 0475.333.058 - 2. SPRLAU BVBA - 3. Etablissement membre de l'Ordre des Avocats de Paris / Ordre advocaat bij de balie te Parijs - 4. Membre du barreau d'Amsterdam inscrit à Bruxelles / Advocaat bij de balie te Amsterdam ingeschreven te Brussel - 5. Membre du barreau de Colonne inscrit à Bruxelles / Advocaat bij de balie te Keulen ingeschreven te Brussel - 6. Membre du barreau de Bâtonnet inscrit à Bruxelles / Advocaat bij de balie te Breda ingeschreven te Brussel - 7. Membre des barreaux des Philippines et de New York inscrit à Bruxelles / Advocaat bij de balie van de Filipijnen en New York ingeschreven te Brussel - 8. Membre des barreaux de Québec, de l'Ontario et de New York inscrit à Bruxelles / Advocaat bij de balie te Québec, te l'Ontario-Canada en te New York ingeschreven te Brussel - 9. Membre du barreau d'Algerie inscrit à Bruxelles / Advocaat bij de balie te Algiers ingeschreven te Brussel - 10. Solicitor admitted to the Law Society of New South Wales inscrit à Bruxelles/Solliciteur toegelaten voor de Supreme Court van New South Wales ingeschreven te Brussel - 11. Membre du barreau d'Inde (New Delhi) inscrit à Bruxelles / Advocaat bij de balie van India (New Delhi) ingeschreven te Brussel - 12. Membre du barreau de Paris inscrit à Bruxelles / Advocaat bij de balie te Parijs ingeschreven te Brussel

* Maxwell Chambers - 32 Maxwell Road, # 03-01 Singapore 069115 - Tel. +65 6408 3343 - E-mail: singapore@hvdb.com

No.	Document Saving Code	Description	Date
1	1993.07.13-B52-02	Note de Transmission, objet: Charte européenne de l'Energie, SN/3871/93, from Secretariat general du conseil to the delegations of the ad hoc groupe (1993.07.13)	13-7-1993
2	1993.06.21-B50-06	<p>Telecopy - for Clive Jones from Bourgeau (subject document: Summary of EC contacts in Moscow) N. Telefax: 295.01.50. Fax send on 1993.06.21 with documents: doc. nr. 7337/93 (restreint, ENER 66, EUROR 133, NIS 58, date 1993.06.16) and doc. nr. 7337/93 (COR 1 (en) restréint, ENER 66, EUROR 133, NIS 58, date 1993.06.17) from General Secretariat of the Council to the ad hoc working party on the European Energy Charter.</p> <p>This document apparently contains a "debriefing" of a visit to Moscow. During this visit the Chairman of Parliament (Supreme Soviet) clarified to the EU that the governments powers were very limited vis-à-vis those of Parliament.</p>	21-6-1993
3	1993.07.05-B51-04	Note a l'attention de mm. Caccia Dominioni, Busby Ayrat, Waeterloos Goppel (and others) from Hugo Paemen, Commission Des Communautés Europeennes Direction Generale Relations Economiques Exterieures (Nr. 010991), objet: Négociations avec la Russie dans le domaine du commerce des matières nucléaires. Number of receipt Direction Generale Energie: nr. 01597 and received on 1993.07.08. (incl. a Note for the file of S. Bertolletti, note for the file of D.A. Tirr and Statement of A.T. Shatalov at the Plenary Session of 2 July 1993)	5-7-1993

On the same date, i.e., 23 June 2017, we had also submitted an identical application to the European Commission ("Commission"), requesting access of the above three documents.

In respect of our application to the Commission, we received an email dated 28 July 2017 from the ENER Access Documents Team of the Commission (**Annex B**), in which the Commission notified us that it will handle our request for access to the documents only to the extent of the third document in the above table, i.e., the document bearing the Saving Code 1993.07.05-B51-04. With regard to the remaining two documents, i.e., the documents bearing the Saving Codes 1993.07.13-B52-02 and 1993.06.21-B50-06, the Commission asked us to make a separate request to the European Council.

In light of the Commission's email dated 28 July 2017, and further to our Application dated 23 June 2017, I am writing this letter to follow up on our request for access to the above listed documents, especially the first two ones in the table, i.e., the documents bearing the Saving Codes 1993.07.13-B52-02 and 1993.06.21-B50-06. Since time is of the essence in the Court proceedings, I will be grateful if the Application is processed expeditiously.

As you are aware, pursuant to Article 7(1) of the EC Regulation 1049/2001, any application for access to a document shall be handled promptly, such that it is determined within 15 working days from registration of the application. Further, this provision also requires an acknowledgement of receipt of the application to be sent to the applicant. Accordingly, I request you to notify me of the receipt of the Application dated 23 June 2017, and of its registration with the European Council, as soon as possible.

I will be grateful if you would consider our request favourably, and provide us with the above information regarding the status of the Application dated 23 June 2017; and, in turn, with access to the above listed documents (either by way of consultation or copy, preferably the latter). In light of the impending deadline for the written submissions in the Court proceedings, we will need these documents at the latest by Friday, 8 September 2017.

As mentioned in the Application, our linguistic preferences of the documents are (i) English; (ii) Dutch; and (iii) Russian, provided that the documents are available in any of these three languages.

Yours sincerely,

DELETED





HANOTIAU & VAN DEN BERG

BRUSSELS – SINGAPORE *

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TVA/BTW/VAT: BE 0475.333.058

Annex A

DELETED

General Secretariat of the
Council of the European Union
DG F - Transparency
rue de la Loi/Wetstraat 175
B-1048 Bruxelles/Brussel

Via Post

23 June 2017

Answer
Advocaat

Re: Request for documents in respect of the negotiating history of the Energy Charter Treaty 1994

Dear Sir/Madam,

By way of introduction, my name is **DELETED** a partner at the law firm Hanotiau & van den Berg in Brussels. Our firm is representing the Russian Federation as legal counsel in the Court of Appeal of The Hague concerning the judgment of the Hague District Court of 20 April 2016 in the following three cases: (i) *Yukos Universal Limited v. The Russian Federation*; (ii) *Veteran Petroleum Limited v. The Russian Federation*; (iii) *Hulley Enterprises Limited v. The Russian Federation*.

In pursuance of our representation of our client, we require certain documents pertaining to the negotiating history of the Energy Charter Treaty 1994 ("ECT"). It is for this purpose that I am writing to you, on behalf of Hanotiau & van den Berg. These documents, and the details in respect thereof, are enlisted in the table below:

1. *Annuaire de la S.C.R.L. HANOTIAU & VAN DEN BERG, société civile à forme commerciale - RPM Bruxelles n° 0475.333.058 / Yuzavice (an de C.V.B.A. HANOTIAU & VAN DEN BERG, besloten vennootschap met beperkte aansprakelijkheid - RPR Brussel n° 0475.333.058 - 2. *SPRLEU BVBA + 3. *Egalisation membres du barreau de Paris / Dikadvocaat bij de Raad te Parijs - 4. *Membres du barreau d'Amsterdam inscrits à Bruxelles / Advocaat bij de Raad te Amsterdam ingeschreven te Brussel - 5. *Membres du barreau de Cologne inscrits à Bruxelles / Advocaat bij de Raad te Keulen ingeschreven te Brussel - 6. *Membres du barreau de Bâle inscrits à Bruxelles / Advocaat bij de Raad te Bazel ingeschreven te Brussel - 7. *Membres du barreau de Philadelphie et de New York inscrits à Bruxelles / Advocaat bij de Raad te Philadelphia en New York ingeschreven te Brussel - 8. *Membres du barreau de Québec, du Haut-Canada et de New York inscrits à Bruxelles / Advocaat bij de Raad te Québec, te Hout-Canada en te New York ingeschreven te Brussel - 9. *Membres du barreau d'Atlanta inscrits à Bruxelles / Advocaat bij de Raad te Atlanta ingeschreven te Brussel - 10. *Advocaat adreata devers la Cour Suprême de New South Wales inscrits à Bruxelles / Advocaat bij de Raad te Australië ingeschreven te Brussel - 11. *Membres du barreau d'Inde (New Delhi) inscrits à Bruxelles / Advocaat bij de Raad te India (New Delhi) ingeschreven te Brussel - 12. *Membres du barreau de Paris inscrits à Bruxelles / Advocaat bij de Raad te Parijs ingeschreven te Brussel************

* Maxwell Chambers - 52 Maxwell Road, # 03-01 Singapore 069115 - Tel: +65 6408 3343 - Email: singapore@hvdb.com

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2	1993.06.21-B50-06	<p>Telecopy - for Clive Jones from Bourgeau (subject document: Summary of EC contacts in Moscow) N. Telefax: 295.01.50. Fax send on 1993.06.21 with documents: doc. nr. 7337/93 (restreint, ENER 66, EUROR 133, NIS 58, date 1993.06.16) and doc. nr. 7337/93 (COR I (en) restraint, ENER 66, EUROR 133, NIS 58, date 1993.06.17) from General Secretariat of the Council to the ad hoc working party on the European Energy Charter.</p> <p>This document apparently contains a "debriefing" of a visit to Moscow. During this visit the Chairman of Parliament (Supreme Soviet) clarified to the EU that the governments powers were very limited vis-à-vis those of Parliament.</p>	21-6-1993
3	1993.07.05-B51-04	Note a l'attention de mm. Caccia Dominioni, Busby Ayrat, Waeterloos Goppel (and others) from Hugo Paemen, Commission Des Communautes Europeennes Direction Generale Relations Economiques Exterieures (Nr. 010991), objet: Négociations avec la Russie dans le domaine du commerce des matières nucléaires.	5-7-1993

		Number of receipt Direction Generale Energie: nr. 01597 and received on 1993.07.08. (incl. a Note for the file of S. Bertoletti, note for the file of D.A. Tirr and Statement of A.T. Shatalov at the Plenary Session of 2 July 1993)	
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Our interest in the above documents stems from, *inter alia*, the following reasons:

- (i) The Russian Federation was a signatory to the ECT. The above-mentioned legal cases essentially pertain to an interpretation of the ECT and involve the question of the Russian Federation's signature and conduct surrounding the ECT. To interpret any treaty or international convention, any documents indicative of the legal instrument's *travaux préparatoires* lend immense value to the interpretative exercise. This is especially so before a court of law such as the Court of Appeal of The Hague.
- (ii) Since the ECT was finalised during the European Energy Charter Conference in 1994, and given that the European Union is an independent party to the ECT, the ECT is part of European law. Consequently, the above listed documents qualify as "European Parliament, Council and Commission documents" under Article 255 of the Treaty establishing the European Community, giving Hanotiau & van den Berg a right of access to them.
- (iii) As a law firm with our registered office in Brussels, Belgium, Hanotiau & van den Berg is a legal person entitled to have access to the above listed documents under Article 2(1) of the EC Regulation No. 1049/2001 of 30 May 1991. I, as a partner at Hanotiau & van den Berg, am requesting for the above listed documents, on behalf of the law firm. Our website is <http://www.hvdb.com> and our contact details, along with my email address, are as follows:

HANOTIAU & VAN DEN BERG (HVDB)

IT Tower (9th Floor)
 480 Avenue Louise · B9
 1050 Brussels · Belgium
 T. +32 2 290 39 00
 F. +32 2 290 39 39

E. info@hvdb.com; ~~DELETED~~@hvdb.com

- (iv) Lastly, you may note that Hanotiau & van den Berg had made a request for these documents to the European Energy Charter recently. However, Hanotiau & van den Berg were not given access to them, on the ground that the law firm did not mention the purpose for which we required access to these documents. This was despite informing the Energy Charter about the above-mentioned legal matters in which Hanotiau & van den Berg is representing

the Russian Federation as counsel, and providing a Power of Attorney from the Russian Ministry of Justice to that effect. This Power of Attorney is also annexed to this letter.

I will be grateful if you would consider our request favourably and provide us with access to the above listed documents (either by way of consultation or copy, preferably the latter). Of course, if the requested documents are not in your position, I will be grateful to have any information in respect of how and before which other institution I can make another request for them.

Our linguistic preferences of the documents are (i) English; (ii) Dutch; and (iii) Russian, provided that the above-mentioned documents are available in any of these three languages.

Yours sincerely,

DELETED



DELETED

From: ENER-ACCES-DOCUMENTS@ec.europa.eu
Sent: vendredi, 28 juillet 2017 12:21
To: DELETED
Cc: ENER-ACCES-DOCUMENTS@ec.europa.eu
Subject: Access to document request - DELETED - GESTRDEM 2017/4414

Dear DELETED

Thank you for your request dated 23/06/2017. We hereby acknowledge receipt of your application for access to documents, which was registered on 28/07/2017 under reference number **GestDem 2017/4414**.

Document request: Documents in respect of the negotiating history of the Energy Charter Treaty 1994

1. **1993.07.13-B52-02;** Note de Transmission, objet: Charte européenne de l'Energie, SN/3871/93, from Secretariat general du conseil to the delegations of the ad hoc groupe (1993.07.13)
2. **1993.06.21-B50-06;** Teletype - for Clive Jones from Bourgeau (subject document: Summary of EC contacts in Moscow) N. Telefax: 295.01.50. Fax send on 1993.06.21 with documents: doc. nr. 7337/93 (restreint, ENER 66, EUROR 133, NIS 58, date 1993.06.16) and doc. nr. 7337/93 (COR 1 (en) restréint, ENER 66, EUROR 133, NIS 58, date 1993.06.17) from General Secretariat of the Council to the ad hoc working party on the European Energy Charter.
3. **1993.07.05-B51-04;** Note a l'attention de mm. Caccia Dominioni, Busby Ayrat, Waeterloos Goppel (and others) from Hugo Paemen, Commission Des Communautés Europeennes Direction Generale Relations Economiques Exterieures (Nr. 010991), objet: Négociations avec la Russie dans le domaine du commerce des matières nucléaires. Number of receipt Direction Generale Energie: nr. 01597 and received on 1993.07.08. (inci. a Note for the file of S. Bertoletti, note for the file of D.A. Tirr and Statement of A.T. Shatalov at the Plenary Session of 2 July 1993)

Please note that the Commission will handle point 3 of your request. For points 1 and 2, please send a separate request to the Secretariat General of the Council.

In accordance with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, your application will be handled within 15 working days. The time limit will expire on **21/08/2017**.

In case this time limit needs to be extended, you will be informed in due course.

Yours faithfully,

ENER ACCES DOCUMENTS Team



European Commission
DG ENER

From: [SECRETARIAT DGF Access](#)
To: DELETED
Subject: Ref. 17/1767 - Energy Charter Treaty 1994
Date: vendredi 11 août 2017 15:54:00
Attachments: [image002.jpg](#)

Dear DELETED,

Thank you for your fax dated 08 August 2017 regarding your request for access to documents of the Council of the European Union.

The Transparency Service of the General Secretariat has received and registered your request on 8 August 2017.

We would like to inform you that the Transparency Service has only been informed of your request on 8 August 2017 as your letter of 23 June 2017 has not been transmitted to us due to a technical problem. We would like to apologize for this.

All requests for access to documents are treated on the basis of Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

You will receive a reply to your request within 15 working days. We will make our best to deal with it as soon as possible.

For any further contacts with us, we would kindly suggest sending us emails at the following address : access@consilium.europa.eu

Yours sincerely,

Transparency



Council of the European Union
General Secretariat
Communication and Information
Knowledge Management
Transparency

Rue de la Loi/Wetstraat, 175 - B-1048 Bruxelles/Brussel - Belgique/België
www.consilium.europa.eu | access@consilium.europa.eu

Disclaimer: The views expressed are solely those of the writer and may not be regarded as stating an official position of the Council of the EU
Clause de non-responsabilité: Les avis exprimés n'engagent que leur auteur et ne peuvent être considérés comme une position officielle du Conseil de l'UE



Council of the European Union
General Secretariat

Directorate-General Communication and Information
Knowledge Management
Transparency
Head of Unit

Brussels, 8 September 2017

DELETED

DELETED

Ref. 17/1767-mj/dm

Request made on: 08.08.2017

Deadline extension: 30.08.2017

Dear DELETED

Thank you for your request for access to documents of the Council of the European Union.¹

As it is mentioned in the DG ENER Commission's email dated 28 July 2017 (which was annexed to your request) that the Commission would handle the third document² of your request - which is a Commission document -, the General Secretariat of the Council has not dealt with this part of your request.

We would like to inform you that we were not able to identify the documents under the references mentioned in your request i.e. 1993.07.13-B52-02 and 1993.06.21-B50-06.

However, we were able to identify the following documents: SN 3871/93, 7337/93 and 7337/93 COR 1 which are mentioned in your request.

I regret to inform you that access to these documents cannot be given for the reasons set out below.

¹ The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

² i.e. 1993.07.05-B51-04 - Note à l'attention de mm. Caccia Dominioni, Busby Ayral, Waeterloos Goppel (and others) from Hugo Paemen, Commission des Communautés Européennes Direction Générale Relations Economiques Extérieures (Nr 01091), objet : Négociations avec la Russie dans le domaine du commerce des matières nucléaires. Number of receipt Direction Générale Energie: nr01597 and received on 1993.07.08 (incl. a Note for the file of S. Bertoletti, note for the file of D.A. Tirr and Statement of A.T. Shatalov at the Plenary Session of 2 July 1993.

Document **SN 3871/93** is a Cover Note of 13 July 1993 concerning the European Energy Charter. It contains a Presidency working document on progress in the negotiations on the European Energy Charter.

Document **7337/93 RESTREINT (+ COR 1)** is an Information Note of 16 June 1993 from the General Secretariat of the Council to the High Level ad hoc Working Party on the European Energy Charter containing a summary of EC contacts in Moscow on 10 and 11 June 1993 regarding the European Energy Charter Treaty.

These documents contain information on high-level political discussions with Russia on sensitive issues. Document SN 3871/93 also describes the EU's options for negotiating with Russia in great detail. The requested documents contain EU internal views and negotiation strategy relating to the negotiations with Russia on the European Energy Charter.

Even though the negotiations referred to in these documents have been concluded, release of the information contained in the documents would weaken the position of the European Union in the framework of similar future international negotiations.

Release of the information contained in these documents would also prejudice relations between the European Union and the Russian Federation.

Disclosure of the documents would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to the documents.³

We have also looked into the possibility of releasing parts of the documents.⁴ However, as the information contained in each of the documents forms an inseparable whole, the General Secretariat is unable to give partial access.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).⁵

Yours sincerely,

Ramón CHISMOL IBÁÑEZ

³ Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

⁴ Article 4(6) of Regulation (EC) No 1049/2001.

⁵ Article 7(2) of Regulation (EC) No 1049/2001.

Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EC) No 45/2001), if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.



HANOTIAU & VAN DEN BERG

BRUSSELS – SINGAPORE *

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 TVA/BTW/VAT : BE 0475.333.058

DELETED

Attacht
 Advocaat

**General Secretariat of the
 Council
 of the European Union**
 DG F - Transparency
 rue de la Loi/Wetstraat 175
 B-1048 Bruxelles/Brussel

Via Post and Email

26 September 2017

Dear Sir/Madam,

Re: Confirmatory Application for reconsideration of the European Council's decision dated 8 September 2017 on the Application dated 23 June 2017 (Article 7(2) of the EU Regulation No. 1049/2001)

I am writing in furtherance of (i) my letter dated 23 June 2017 (**Annex A**), in which I had applied for access to three documents pertaining to the negotiating history of the Energy Charter Treaty 1994, pursuant to Article 6 of the EC Regulation No. 1049/2001 (“**Application**”); and (ii) my letter dated 8 August 2017 (**Annex B**), which was to follow up on the status of the Application in respect of two of the three documents requested, i.e., the documents bearing the Saving Codes 1993.07.13-B52-02 and 1993.06.21-B50-06 (“**Follow-up Letter**”).

Both the Application and the Follow-up Letter were sent in my capacity as a partner at the law firm, Hanotiau & van den Berg in Brussels, which represents the Russian Federation as legal counsel in the Court of Appeal of The Hague against the judgment of the Hague District Court of 20 April 2016 in the following three cases: (i) *Yukos Universal Limited v. The Russian Federation*; (ii) *Veteran Petroleum Limited v. The Russian Federation*; and (iii) *Hulley Enterprises Limited v. The Russian Federation* (“**Court proceedings**”).

1. Associé de la S.C.R.L. HANOTIAU & VAN DEN BERG, société civile à forme commerciale - RPM Bruxelles n° 0475.333.058 / Vennoot van de C.V.B.A. HANOTIAU & VAN DEN BERG, burgerlijke vennootschap met handelsvorm - RPR Brussel n° 0475.333.058 - 2. SPRLU/ BVBA - 3. Egalement membre du barreau de Paris / Ook advocaat bij de balie te Parijs - 4. Membre du barreau d'Amsterdam inscrit à Bruxelles / Advocaat bij de balie te Amsterdam ingeschreven te Brussel - 5. Membre du barreau de Cologne inscrit à Bruxelles / Advocaat bij de balie te Keulen ingeschreven te Brussel - 6. Membre du barreau de Bucarest inscrit à Bruxelles / Advocaat bij de balie van de Filippijnen en New York ingeschreven te Brussel - 7. Membre des barreaux de Philippines et de New York inscrit à Bruxelles / Advocaat bij de balie te Quebec, te Haïti-Canada en te New York ingeschreven te Brussel - 8. Membre du barreau de Québec, du Haut-Canada et de New York inscrit à Bruxelles / Advocaat bij de balie te Quebec, te Haïti-Canada en te New York ingeschreven te Brussel - 9. Membre du barreau d'Athènes inscrit à Bruxelles / Advocaat bij de balie te Athene ingeschreven te Brussel - 10. Sollicitant admis devant la Cour Suprême de New South Wales inscrit à Bruxelles/Sollicitant toegelaten voor de Supremes Court van New South Wales ingeschreven te Brussel - 11. Membre du barreau d'Inde (New Delhi) inscrit à Bruxelles / Advocaat bij de balie van India (New Delhi) ingeschreven te Brussel - 12. Membre du barreau de Paris inscrit à Bruxelles / Advocaat bij de balie te Parijs ingeschreven te Brussel

* Maxwell Chambers - 32 Maxwell Road, # 03-01 Singapore 069115 - Tel. +65 6408 3343 - E-mail: singapore@hvdb.com

The requested documents in the Application, and the details in respect thereof, are reiterated in the table below, for your convenience:

No.	Document Saving Code	Description	Date
1	1993.07.13-B52-02 ("Document 1")	Note de Transmission, objet: Charte européenne de l'Energie, SN/3871/93, from Secretariat general du conseil to the delegations of the ad hoc groupe (1993.07.13)	13-7-1993
2	1993.06.21-B50-06 ("Document 2")	<p>Telecopy - for Clive Jones from Bourgeau (subject document: Summary of EC contacts in Moscow) N. Telefax: 295.01.50. Fax send on 1993.06.21 with documents: doc. nr. 7337/93 (restreint, ENER 66, EUROR 133, NIS 58, date 1993.06.16) and doc. nr. 7337/93 (COR 1 (en) restraint, ENER 66, EUROR 133, NIS 58, date 1993.06.17) from General Secretariat of the Council to the ad hoc working party on the European Energy Charter.</p> <p>This document apparently contains a "debriefing" of a visit to Moscow. During this visit the Chairman of Parliament (Supreme Soviet) clarified to the EU that the governments powers were very limited vis-à-vis those of Parliament.</p>	21-6-1993

3	1993.07.05-B51-04 ("Document 3")	Note a l'attention de mm. Caccia Dominioni, Busby Ayrat, Waeterloos Goppel (and others) from Hugo Paemen, Commission Des Communautés Europeennes Direction Generale Relations Economiques Exterieures (Nr. 010991), objet: Négociations avec la Russie dans le domaine du commerce des matières nucléaires. Number of receipt Direction Generale Energie: nr. 01597 and received on 1993.07.08. (incl. a Note for the file of S. Bertolotti, note for the file of D.A. Turr and Statement of A.T. Shatalov at the Plenary Session of 2 July 1993)	5-7-1993
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In respect of Document 3 above, i.e., the document bearing the Saving Code 1993.07.05-B51-04, the ENER Access Documents Team of the European Commission ("**Commission**"), by its email dated 28 July 2017, informed us that it would handle our request for access to the same, which we have since been pursuing with the Commission.

In respect of Documents 1 and 2 above, i.e., the documents bearing the Saving Codes 1993.07.13-B52-02 and 1993.06.21-B50-06 (together referred to as "**Documents**"), the Commission, by its email dated 28 July 2017, directed us to the European Council ("**Council**") where our Application pertaining, *inter alia*, to Documents 1 and 2 was already pending since 23 June 2017. The Council rendered its decision on 8 September 2017 ("**Council's Decision**") (**Annex C**), in which we were refused access to both Documents 1 and 2.

This Confirmatory Application pertains to the above Documents 1 and 2, i.e., (i) the Note de Transmission, objet: Charte européenne de l'Energie, SN/3871/93, from Secretariat general du conseil to the delegations of the ad hoc groupe (1993.07.13), and (ii) Telecopy - for Clive Jones from Bourgeau (subject document: Summary of EC contacts in Moscow) N. Telefax: 295.01.50. Fax send on 1993.06.21 with documents: doc. nr. 7337/93 (restreint, ENER 66, EUROR 133, NIS 58, date 1993.06.16) and doc. nr. 7337/93 (COR 1 (en) restréint, ENER 66, EUROR 133, NIS 58, date 1993.06.17) from General Secretariat of the Council to the ad hoc working party on the European Energy Charter.

In the Council's Decision, it stated that while it was "*not able to identify the documents under the references mentioned in [our] request i.e. 1993.07.13-B52-02 and 1993.06.21-B50-06*", it identified the documents constituting Documents 1 and 2, i.e., SN 3871/93, 7337/93 and 7337/93

COR 1. The Council clarified that while Document SN 3871/93 “contains a Presidency working document on progress in the negotiations on the European Energy Charter”, Document 7337/93 RESTREINT (+ COR 1) “contain[s] a summary of EC contacts in Moscow on 10 and 11 June 1993 regarding the European Energy Charter Treaty”.

However, the Council found that “access to these [D]ocuments cannot be given”, since (i) first, “[t]hese [D]ocuments contain information on high-level political discussions with Russia on sensitive issues”, (ii) second, “[t]he requested [D]ocuments contain EU internal views and negotiation strategy relating to the negotiations with Russia on the European Energy Charter”, (iii) third, “Document SN 3871/93 also describes the EU’s options for negotiating with Russia in great detail”, and (iv) fourth, “release of the information contained in the documents would weaken the position of the European Union in the framework of similar future international negotiations” and would “also prejudice relations between the European Union and the Russian Federation”. Invoking Article 4(1)(a), third indent of the EC Regulation 1049/2001, the Council stated that “[d]isclosure of the documents would therefore undermine the protection of the public interest as regards international relations”.

In this regard, we request you to reconsider your decision in respect of these two Documents for the reason that the basis for our request to access the Documents is not related to any matters surrounding any sensitive information in respect of high-level political discussions, internal views of any of the negotiating parties, negotiation strategies or other related information in respect of the European Energy Charter or similar future international negotiations. Instead, our request for access to the Documents pertains to obtaining an understanding of certain provisions of the Energy Charter Treaty 1994 (“**Energy Charter Treaty**”) with the guidance of its *travaux préparatoires*.

In this regard, we consider it useful to provide the Council with an insight into the basis or motivation behind our request for accessing the Documents. As mentioned in our Application of 23 June 2017, our request was intended to obtain “*certain documents pertaining to the negotiating history of the Energy Charter Treaty*”. Information pertaining to the Energy Charter Treaty’s negotiating history is helpful to the interpretation and understanding of the Energy Charter Treaty, which is at stake, amongst other issues, in the Court proceedings in the Court of Appeal of The Hague.

In essence, these Court proceedings emanate out of three arbitral awards rendered by an arbitral tribunal constituted under the administration of the Permanent Court of Arbitration. These arbitral awards and the Court proceedings, *inter alia*, pertain to the Energy Charter Treaty and certain provisions thereof. One of the questions in these proceedings relates to the arbitral tribunal’s jurisdiction, which the Russian Federation argues was wrongfully exercised, since such jurisdiction does not exist under the Energy Charter Treaty. The provisions relevant to the arbitral tribunal’s exercise of jurisdiction are, *inter alia*, Articles 1(6), 1(7), 21(5), 26 and 45 of the Energy Charter Treaty. The issues surrounding each of these provisions before the Court of

4

Appeal of The Hague are thus primarily issues of law relating to their interpretation and application, with respect to which the Parties to the Court proceedings are at dispute.

Accordingly, our interest in the Documents being requested is limited to gathering any understanding of the Energy Charter Treaty, its application and its interpretation that such Documents may provide. In this regard, we are hopeful that the Documents may contain information relating to the position adopted by either the European Union, the Russian Federation, or any other relevant party that participated in the negotiations of the Energy Charter Treaty.

In light of the above, if the Council continues to consider itself unable to provide full access to the requested Documents, due to the sensitive information contained therein that may reveal negotiation strategies of the concerned State parties or may shed light on certain high-level political discussions or other prejudicial information affecting the public interest, we request the Council to provide us with the relevant parts of these Documents that may be useful for our limited purpose. In this regard, we wish to note that we do not in any way object to the redaction of any portions of the Documents that relate to negotiations surrounding nuclear energy, high-level political discussions with Russia, the EU's internal views and negotiation strategy or any other sensitive and prejudicial information in respect of the Energy Charter Treaty or other similar international negotiations that the Council considers to be sensitive in nature. After all, our interest in the Documents is not to obtain information in respect of matters relating to nuclear materials or negotiation strategy, but is limited only to purely legal matters pertaining to the application and interpretation of the Energy Charter Treaty.

We note in this regard, that EC Regulation 1049/2001 envisages such partial access to sensitive documents, i.e., to the extent that such documents are not covered by the exceptions in Article 4 of the EC Regulation 1049/2001. To this end, Article 4(6) of the EC Regulation 1049/2001 provides that “[i]f only parts of the requested document are covered by any of the exceptions [in Article 4], the remaining parts of the document shall be released.”

In respect of this provision, the Council's Decision on 8 September 2017 stated that no partial access to the requested Documents can be granted under Article 4(6) of the EC Regulation 1049/2001 “as the information contained in each of the [D]ocuments forms an inseparable whole”. However, it is essential to note that Article 4(6) of the EC Regulation 1049/2001 envisages the obligation upon an institution to consider whether redaction of the requested documents is possible. In other words, while, upon first examination, the Council concluded that the Documents were sensitive or covered by exceptions in Article 4 of the EC Regulation 1049/2001, the Council is requested to also consider whether a redaction of the sensitive passages in the requested Documents is feasible. Article 4(6) of the EC Regulation 1049/2001 has been

read by the European Court of Justice in this manner on many occasions, based on the very wording of the provision itself.¹

As mentioned above, our interest in the requested Documents is only in respect of any information contained therein concerning the application or interpretation of the Energy Charter Treaty. Consequently, even if the Council chooses to redact the entirety of the remaining portions of the Documents (which may constitute a significant majority of the Document), the limited information concerning the Energy Charter Treaty shall suffice for our purposes.

In light of the above, we request the Council to reconsider its Decision of 8 September 2017.

Based on such reconsideration, we request the Council to provide us with access to the (relevant part of the) Documents, i.e., (i) the Note de Transmission, objet: Charte européenne de l'Energie, SN/3871/93, from Secretariat general du conseil to the delegations of the ad hoc groupe (1993.07.13), and (ii) Telecopy - for Clive Jones from Bourgeau (subject document: Summary of EC contacts in Moscow) N. Telefax: 295.01.50. Fax send on 1993.06.21 with documents: doc. nr. 7337/93 (restreint, ENER 66, EUROR 133, NIS 58, date 1993.06.16) and doc. nr. 7337/93 (COR 1 (en) restréint, ENER 66, EUROR 133, NIS 58, date 1993.06.17) from General Secretariat of the Council to the ad hoc working party on the European Energy Charter.

In respect of our request to access the requested Documents partially, we are at the disposal of the Council to exercise its reasonable discretion in respect of making a determination of what portions of the Documents contain sensitive information that needs to be redacted, and what portions may be disclosed to us.

As mentioned in the Application, our linguistic preferences of the Documents are (i) English; (ii) Dutch; and (iii) Russian, provided that the documents are available in any of these three languages.

Yours sincerely,

DELETED



¹ *Sophie in 't Veld v Council of the European Union*, Case T-529/09, para 106; *WWF European Policy Programme v Council of the European Union*, Case T-264/04, para 50; *P Council v Hautala*, Case C-353/99, para 29.