



EUROPEAN COMMISSION
EUROSTAT

The Director-General

Luxembourg,
ESTAT-DG/MK/E1/D(2023)

Ms Alice Bernard
ClientEarth AISBL
Belgium
and
Mr Helmut Burtscher-Schaden
GLOBAL 2000
Friends of the Earth
Austria

*By registered letter with
acknowledgment of receipt*

Subject: Your application for access to documents (2022-5566)

Dear Ms Bernard, Dear Mr Burtscher-Schaden,

We refer to your request for access to European Commission documents registered on 29 September 2022 under the above-mentioned reference number.

We regret to inform you that the Commission does not hold any documents that would correspond to the description given in your application.

According to the provisions of Article 3 (4) of Regulation (EC) No 1185/2009 ¹:

For reasons of confidentiality, the Commission (Eurostat) shall aggregate the data before publication in accordance with the chemical classes or categories of products indicated in Annex III, taking due account of the protection of confidential data at the level of individual Member State. The confidential data shall be used by national authorities and by the Commission (Eurostat) exclusively for statistical purposes, in accordance with Article 20 of Regulation (EC) No 223/2009.

Due to this legal requirement, and considering the numerous data entries at various aggregation levels, declared as confidential by the national authorities that collected the data, Eurostat has never been in a position to aggregate or publish data on active substances, at Member State level or at European Union level. The EU aggregates per active substance have never been computed inside Eurostat's internal database or otherwise, therefore they

¹ Regulation (EC) No 1185/2009 of the European Parliament and of the Council of 25 November 2009 concerning statistics on pesticides (*OJ L 324, 10.12.2009, p. 1*).

are not available upon a search of the database as a separate document. The Harmonised Risk Indicator ², measuring the progress achieved in meeting the objectives of the Directive 2009/128/EC³ on the sustainable use of pesticides, is computed on a different technical workflow, which also does not include any aggregates per active substance.

In this context, I would like to point out that the question regarding the possible status of information stored in databases as a document within the meaning of Regulation (EC) No 1049/2001⁴ has already been subject to an assessment by the General Court, which in its ruling in Case T-214/13 established that ‘in the event of an application for access designed to have the Commission carry out a search of one or more of its databases using search criteria specified by the applicant, the Commission is obliged, subject to the possible application of Article 4 of Regulation (EC) No 1049/2001, to accede to that request, if the requisite search can be carried out using the search tools which it has available for the database in question’⁵.

With this judgement, the General Court confirmed the previous judgment in the *Dufour* case, where the Court stated that ‘anything that can be extracted from a database by means of a normal or routine search may be the subject of an application for access’⁶.

Furthermore, I would like to bring to your attention the most recent judgement in Case C-491/15P, where the Court of Justice took the position that the routine character of an operation which determines whether information extracted from a database is a document, is determined by whether the operation has been made available to final users for general use⁷.

The information requested by you is not stored in Eurostat’s database MDT-APROPRODNS-PESTSALLES, which contains the data on placing on the market of pesticides. The data range concerned can therefore not be extracted from the relevant database by means of a routine search operation using the search tools available. For these reasons, the information requested is not included in any existing document.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position. Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter.

² https://ec.europa.eu/eurostat/databrowser/view/aei_hri/default/table?lang=en

³ Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (*OJ L 309*, 24.11.2009, p. 71)

⁴ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (*OJ L 145*, 31.5.2001, p. 43)

⁵ Judgment of the General Court of 2 July 2015, *Typke v European Commission*, T-214/13, EU:T:2015:448, paragraph 56 (hereafter referred to as the ‘*Typke v European Commission* judgment’).

⁶ Judgment of the General Court of 22 October 2011, *Dufour v European Central Bank*, T-436/09, EU:T:2011:634, paragraph 153.

⁷ Judgment of the Court of Justice of 11 January 2017, *Typke v European Commission*, C-491/15P, EU:C:2017:5, paragraph 36.

You can submit it in one of the following ways:

by mail:

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,

(eSigned)

Mariana Kotzeva

