



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,
SANTE/E3/SH/aj/ddg2.e.3(2016) 2510355

***By registered letter with
acknowledgement of receipt***

Advance copy by e-mail to:
ask+request-2688-f54bcd06@asktheeu.org

Dear Mr Harmsen,

Subject: Your application for access to documents – Reference GestDem No 2016/1299

We refer to your e-mail dated 14/03/2016 registered the same date under the above mentioned reference number, in which you request access to “*all correspondence (including emails), agendas, (working) documents, minutes of meetings and any other reports of such meetings related to the inter-service consultation on the Commission proposals on a) the cloning of animals of the bovine, porcine, ovine, caprine and equine species kept and reproduced for farming purposes, and b) the placing on the market of food from animal clones (between December 2011 and January 2014)*”.

The Inter-Service Consultation (ISC) is, in the Commission, a formalised process. The ISC concerning the legislative proposal you are referring to was launched on 2 December 2013. We have taken a broad interpretation of the scope of your request, encompassing not only the ISC strictly speaking, which is a process involving only Commission departments, but also the prior consultation of Commissioner Borg by DG SANTE.

As a result, we have identified 22 documents falling under the scope of your request, between 16 September 2013 and 6 December 2013.

On 27 April 2016, we had already provided you with two documents (Ares (2016)2006629). The remaining 20 documents covered by your request are listed in Annex 0 to this letter. Having examined these documents under the provisions of Regulation (EC) No 1049/2001, I regret to inform you that partial access may be granted to one document only, while the disclosure of the other documents must be refused.

The document disclosed - note from DG SANTE of 2 December 2013 (document No 4)

The expunged parts of the note from the DG SANTE consist in personal data exclusively. 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 Union legislation regarding the protection of personal data.

Mr Vincent Harmsen
Pieter Schroonsstraat 58
1830 Machelen
Belgium

The applicable legislation in this field is 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*¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable². According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the document requested expunged from this personal data.

You may reuse this document free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

Other documents

Having examined the other documents requested under the provisions of Regulation (EC) No 1049/2001, I came to the conclusion that their disclosure would undermine the protection of the decision-making process of the Commission. Therefore, the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 applies to these documents.

In this respect, it has to be recalled that, although the Commission proposals were adopted on 18 December 2013, the decision-making process is still ongoing and involves the Commission in the ordinary legislative procedure. The Commission must indeed defend the proposals on the cloning of animals of the bovine, porcine, ovine, caprine and equine species kept and reproduced for farming purposes and on the placing on the market of food from animal clones at working level at the Council (Council Working Parties) and in the relevant Committees of the European Parliament.

Moreover, the Commission has to formally issue an opinion in first reading and second reading on the amendments of the co-legislators (Article 294(6), (7)(c) TFEU). Where the Commission delivers a negative opinion on the Council's amendments, the latter has to adopt its amendments unanimously (Article 294(9) TFEU). Moreover, the Commission can alter its proposal any time during the legislative procedure, as long as the Council has not acted (Article 293(2) TFEU).

Disclosing the documents at this stage would seriously undermine the Commission's decision-making process as it would reveal views and policy options which are currently under consideration in the legislative debate. The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure, as long as the decision-making process is still ongoing.

If the decision-making process were nevertheless considered to be closed following the adoption of the Commission's proposal – quod non – I consider, in the alternative, that the refused documents and parts of documents would nevertheless be covered by the exception

¹ Official Journal L 8 of 12.1.2001, p. 1.

² Judgment of the Court of Justice of the EU of 29 June 2010 in case C-28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-6055.

provided for in Article 4(3), second subparagraph, for precisely the same reasons as explained above. Indeed, disclosing those documents, reflecting opinions for internal use as part of preliminary deliberations, would seriously harm further Commission decision-making processes as regards the legislation on cloning.

We have considered whether partial access could be granted to these parts of these documents. However, it appears that they are entirely covered by the aforementioned exception.

The exceptions laid down in Article 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of these documents. While it is acknowledged that the issue of cloning raises considerable interest in the public and in the media, this does not outweigh the harm to the Commission's decision making process if all internal considerations of policy approaches on a file that is in the decision-making process were publicly released.

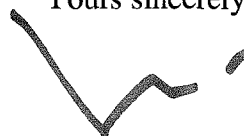
Furthermore, the following documents identified in the list with numbers 3, 5, 6, 6.3, 6.4 and 6.7 contain personal data.

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 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 unit SG-B-4
BERL 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Xavier Prats Monné