



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

Directorate J - Common Support Centre
J.1 - Common Legal support service
Head of Unit

Brussels,
Ares temporary registration nb
[rtd.ddg1.j.1\(2019\)3637477](https://rtd.ddg1.j.1(2019)3637477)

By registered letter with acknowledgment of receipt

Martin Pigeon
Corporate Europe Observatory
Rue d'Edimbourg 26
1060 Brussels
Belgium

Advance copy by e-mail:

ask+request-6668-2bb4f1c4@asktheeu.org;
ask+request-6669-7233c03a@asktheeu.org;
ask+request-6670-736a9de8@asktheeu.org;
ask+request-6672-6337266b@asktheeu.org;
ask+request-6673-51f21158@asktheeu.org;
ask+request-6675-4f9a5c93@asktheeu.org;
ask+request-6688-1c718290@asktheeu.org;
ask+request-6690-a6a9295d@asktheeu.org;
ask+request-6691-bd6c6a19@asktheeu.org;
ask+request-6692-ed7bd38@asktheeu.org;
ask+request-6693-1362439c@asktheeu.org;
ask+request-6694-fa7b624b@asktheeu.org;
ask+request-6704-b355506f@asktheeu.org;
ask+request-6705-18344f6d@asktheeu.org;
ask+request-6706-8af787f2@asktheeu.org.

Subject: Your application for public access to documents – GestDem Ref No 2019/1887; 2019/1889; 2019/1890; 2019/1892; 2019/1894; 2019/1902; 2019/1913; 2019/1914; 2019/1916; 2019/1918; 2019/1919; 2019/1920; 2019/1921; 2019/1922; 2019/1923.

Dear Mr Pigeon,

We refer to your emails dated 22, 25 and 26 March 2019 in which you submitted, within the framework of Regulation (EC) 1049/2001¹, 15 applications for access to documents. Your 15 requests were registered on 28 March 2019 under the above-mentioned reference numbers.

1. SCOPE OF YOUR REQUEST

Some of your requests cover a period between 1st January 2017 and 22nd of March 2019 while others between 1st January 2015 and the 22nd of March 2019. They concern:

- *“briefings, reports, correspondence (email or other), including all attachments to the said correspondence,*
- *a list of all meetings, as well as agendas and minutes or any other reports of such meetings”,*

from, to, or mentioning the following entities, as extracted from your different access to documents applications: Bio-based Industries Consortium; European Bioeconomy Alliance; Europabio; Bio-Based Industries Joint Undertaking; Confederation of European Paper Industries; European Bioplastics; the lobby group ePURE; Bayer, BASF, AB Inbev, Cargill, DSM, Dupont, Novozymes, Novamont, P&G, Total, Unilever, Südzucker, Biochemtex; the lobby group Primary Food Processors; the European Association of Sugar Producers; the lobby group COPA-COGECA; the lobby group European Seeds Association; the lobby group FEDIOL; the Confederation of European Forest Owners; the lobby group Starch Europe; the Forest-based Sector Technology Platform, or anybody acting on its behalf or together with them.

After examination of the scope of your requests, it appeared that your applications concerned a very large number of documents, which would need to be assessed individually. In the light of the fact that such a detailed analysis cannot be carried out within the normal time limits, we informed you by email dated 10 April 2019 that you had submitted a very wide-scoped request even if formally introduced as separate requests.

Consequently, we invited you, pursuant to Article 6(3) of Regulation 1049/2001, to propose a fair solution for dealing with your wide-scoped request.

We explained that such a fair solution could consist of narrowing down the scope of your request, so as to reduce it to a more manageable amount of documents.

We also indicated that the handling of your request would require covering the following steps:

¹ 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) , hereinafter referred to as ‘Regulation (EC) 1049/2001’.

- search for documents related to the criteria as per your request;
- consultation with the operational units within the Directorate responsible for the requested documents;
- retrieval and establishment of a complete list of the documents falling under the scope of your requests;
- scanning of the documents which are not in pdf format;
- preliminary assessment of the content of the documents in light of any potential exceptions under Article 4 of Regulation 1049/2001;
- consultation of third parties, authors of documents concerned, if need be;
- final assessment of the documents in light of the results of the consultations of different services and/or third parties
- redactions of the relevant parts falling under exceptions of Regulation EC 1049/2001;
- preparation of the draft reply and finalisation of it at administrative level, formal approvals of the draft decision;
- final check of the documents to be partially released, if applicable (scanning of the redacted versions, administrative treatment...) and dispatch of the reply.

In this context, you were invited to specify the objective of your requests, your specific interest in the requested documents and to narrow down its scope. We then proposed one of the following alternative options in order to limit the excessive administrative burden relating to the handling of your request:

- either to restrict the scope of your request to meetings held by the senior management (which means Commissioner Carlos Moedas, members of his Cabinet and Director General of DG RTD) and to documents related to the meetings published in the Transparency Register;
- or to restrict the scope of your request to documents of the senior management (which means Commissioner Carlos Moedas, members of his Cabinet and Director General of DG RTD) and limit the number of requests you submitted to us to 3 requests of your choice.

While remaining open to other possible options that helped to narrow down significantly the request.

In your reply of 18 April 2019, you reformulated your request as follows:

“from the Research Commissioner Moedas and/or members of his cabinet, as well as from DG RTD,

- from or to: Bio-based Industries Consortium; European Bioeconomy Alliance; Europabio; Bio-Based Industries Joint Undertaking; Confederation of European Paper Industries; European Bioplastics; the lobby group ePURE; Bayer, BASF, AB Inbev, Cargill, DSM, Dupont, Novozymes, Novamont, P&G, Total, Unilever, Südzucker, Biochemtex; the lobby group Primary Food Processors; the European Association of Sugar Producers; the lobby group COPA-COGECA; the lobby group European Seeds Association; the lobby group FEDIOL; the Confederation of European Forest Owners; the lobby group Starch Europe; and the Forest-based Sector Technology Platform,

- including briefings, reports, correspondence (email or other), including all attachments to the said correspondence,

- a list of all meetings, as well as agendas and minutes or any other reports of such meetings.

- between May 1st 2016 and today.

I have considered your proposal to narrow the scope of my request to correspondence or meeting minutes between the above-mentioned groups and DG RTD's senior management; but this restriction would have been excessive as it would completely exclude the technical levels of DG RTD, and these are very relevant for analysing lobbying activities."

By our e-mail of 25 April 2019, we assessed the solution you proposed and we asked you to further restrict your request, as its scope was still too broad for being handled within the deadline set out in Article 7 of Regulation 1049/2001. We clarified that the purpose of this attempt to find a common agreement on the reduction of scope is to process your request and provide you with a reply, both timely and aligned to your interests. For this reason, we invited you to reconsider a restriction of the scope of your request and to identify some documents, to which, within the framework of your research project, you would like to give priority.

In your reply of 25 April 2019 you proposed that we treat a part of your request within the deadline of 16 May 2019 and the remaining parts after this deadline.

In our e-mail of 2 May 2019 we informed you that we were unable to accept such a solution. Therefore we kindly asked you to identify the documents you would like to give priority to within the deadline of the 16 May 2019. In addition, we confirmed that if after receipt of our reply you considered that in the light of your research project you would be interested in having access to further documents, you could submit a new access to documents request, the scope of which should be equally manageable within the deadline of 15+15 working days.

In your last e-mail of 6 May 2019 you raised different issues about the handling of wide-scoped requests within the Commission. In this regard, please find below some additional explanations that we hope will help you to understand our position better.

First, you pointed out that it is difficult to adapt your request and reduce its scope without knowing exactly the amount of documents that each part of your requests cover.

On this point we have to say (as already indicated in our e-mail of 10 April) that an electronic search in the document management systems of the European Commission for "*people acting on behalf of the entities*" or "*together with them*" (which are the terms used by you) does not yield results, and therefore obliges us to much more time-consuming basic search.

In this sense, and concerning your request for an approximate number of documents, please notice that in case of particularly wide-scoped requests like this one, the mere identification in a list of the documents that would fall within the scope of the request may represent a disproportionate workload. In this case, for instance, the search in one document management system for documents relating to 6 of the entities you mentioned took several hours and resulted in the identification of a total of 356 documents. This of

course even before proceeding with the detailed treatment of the request as mentioned in the steps detailed above.

Secondly, you highlighted that you have already made an effort to reduce the number of documents and to prioritise a set of documents, claiming that the solution proposed by us suits only the institution's interests and hampers yours. You have pointed out that we base our arguments on the impossibility to comply with the 15+15 working days deadline, which you do not consider fair 'as it is well-known that many EU institutions frequently surpass the 15+15 working days limit'. You also point out that the fair solution suggested by you (treating the request in batches) is actually in line with the Commission's own - and other EU bodies' - good practice when it comes to handling wide-scoped requests.

As already mentioned in our email of 26 April 2019, the Commission receives numerous requests for access to documents and, unfortunately, the resources the European Commission can devote to handling those requests are not unlimited. For this reason, Regulation 1049/2001 itself provides for a possibility to restrict the scope of a request, by conferring with the applicant, in case of a request covering a particularly long document or a very large number of documents, in order to find a fair solution (see Article 6.3).

We are aware that unfortunately the Commission has not always been in conditions of providing a reply within the prescribed time limit and it is still struggling to meet these deadlines with the resources available. The Commission practice of negotiating a fair solution with the applicant in cases of wide-scoped request intends to avoid, as much as possible, late replies in cases where the request received already appears not manageable within the deadline. Indeed, and with reference to your proposal to handle your requests in different parts, as done in the past by the Commission, we would like to point that the desire to comply with the deadlines set by the Regulation is one of the reasons why the European Commission no longer handles wide scope requests via batches (please see the rule clarified by the Court of Justice in paragraphs 26-28 of the decision of the 2 October 2014, C-127/13). Pursuant to this decision, the proposal for a fair solution may concern only the number and content of the documents applied for, not the deadline for replying. Please consider that the recent position of the Commission results from a fresh reassessment of the legal consequences of the decision.

As a consequence of the above, we proposed you to restrict your request to a volume of documents that could be handled within the current deadline while offering you the possibility to submit a new request, should you still be interested in receiving further documents.

Unfortunately, as we could not agree on a fair solution, we see ourselves obliged to balance your possible interest in access against the workload resulting from the processing of your application.

As announced in our letter of 09 April 2019 we have therefore proceeded to the unilateral restriction of the scope of your application to the documents that can be dealt with within the current deadline.

We would like to reiterate that, if after receipt of our reply, you consider that in the light of your research project you would be interested in having access to further documents, you may submit a new access to documents request, the scope of which should be equally manageable within the deadline of 15+15 working days.

Taking into account the fact that you have not given us any specific criteria on how to prioritise the documents to be sent to you, and in order to provide you with as many documents as possible within the legal deadline, we have identified, examined and we are pleased to provide you with:

- *documents from or to BIC (Bio-based Industries Consortium), including briefings, reports, correspondence (email or other), including all attachments to the said correspondence,*
- *a list of all meetings, as well as agendas and minutes or any other reports of such meetings,*

between 01 May 2016 and 22 March 2019 (the date of the initial request), and which can be disclosed without consultation of third parties and after redaction of the mere personal data (so that we can provide you with as many documents as possible which are not subject to the need to wait for the results of the consultation with the third party).

As mentioned above, after reception of these documents you can introduce a new request for documents. We would however kindly ask you to take into account when assessing the need for a new request the workload that they may impose in our services, to the detriment of other requests/tasks to be attended.

Having said, this, we confirm that within this deadline we have identified and processed 17 documents falling under the scope of your request (hereinafter the 'requested documents'), namely:

1. FAQ – Project beneficiaries contribution to BIC's payment towards the BBI JU running costs – version 21/09/2018;
2. email of 03-03-2017;
3. email of 01-03-2016;
4. email of 17-02-2017;
5. email of 21-11-2016;
6. extract on partnerships - proposal for Horizon Europe;
7. letter of 10-09-2018;
8. letter of 21-11-2016;
9. list of officials meetings with BIC;
10. note of 05-12-2018;
11. note of the 01-03-2016;
12. note of 15-03-2018;
13. note of 22-02-2017;
14. note to the email of 03-03-2017;
15. note to SRG Chair - BBI Amendment;
16. note to the email of 17-02-2017;
17. SIRA Strategic Innovation & Research Agenda;

2. EXAMINATION UNDER REGULATION (EC) No 1049/2001

Having examined the requested documents under the provisions of Regulation (EC) 1049/2001 and we are pleased to inform you that full access can be granted to documents n. 1, 6, 9 and 17.

You can access document 17 at the following link:

<https://biconsortium.eu/sites/biconsortium.eu/files/downloads/SIRA-2017-Web.pdf>

However, partial access can be granted to documents number 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15 and 16, given that some information has been withheld, as it concerns personal data, as explained below.

2.1 Protection of privacy and the integrity of the individual

According to Article 4(1)(b) of Regulation (EC) 1049/2001, access to documents is refused where disclosure would undermine the protection of "*privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*".

The applicable legislation in this field is Regulation (EU) 2018/1725².

The requested documents contain personal data such as names, surnames, email addresses, telephone and fax number, and signatures of certain members of the Commission staff and of third parties. This information clearly constitutes personal data in the meaning of Article 3(1) of Regulation 2018/1725.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, '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'.

² 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 ('Regulation 2018/1725').

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests 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 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 subject's legitimate interests might be prejudiced.

On the basis of the above, personal data have been withheld from the requested documents, with the exception of names of individuals forming part of senior management staff of the Commission.

3. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation (EC) 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

Unit SG C.1 – Transparency, document management & access to documents

BERL 5/282

B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Reinhard Schulte

Enclosure: requested documents expunged from information protected under Regulation 1049/2001.