




EUROPEAN COMMISSION

Brussels, 3.12.2018
C(2018) 8358 final


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**DECISION OF THE SECRETARY-GENERAL ON BEHALF OF THE COMMISSION PURSUANT
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2018/5423**

Dear ,

I refer to your e-mail of 14 November 2018, registered on the next day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 24 September 2018, registered under the reference number GestDem 2018/5423, addressed to the Directorate-General for Health and Food Safety, you requested access to 'all correspondence (including emails), agendas, minutes of meetings and any other reports of such meetings between officials/representatives/Commissioner/Cabinet member(s) of the Directorate-General for Health and Food Safety and members of the Standing Committee on Plants, Animals, Food and Feed, regarding European Food Safety Authority Guidance Document on the risk assessment of plant protection products on bees (*Apis mellifera*, *Bombus spp.* and solitary bees), between July 2013 and September 2018'.

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

On 13 November 2018, the Directorate-General for Health and Food Safety replied to your application.

It noted that you had already lodged a request on 20 March 2018, registered under reference number GestDem 2018/1680, for the same documents for the period July 2013-April 2018. Therefore, the reply covered only documents drawn up during the period May-September 2018. The Directorate-General for Health and Food Safety referred you the website where the notes and minutes of these meetings are published.

In addition to the notes and minutes referred to above, it also identified the following documents as falling under the scope of your request, the content of which was protected by the exception of Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001:

- (1) Comments on Bee Guidance from Germany_SC July 2018, Ares(2018)5731334 (hereafter 'document 1')
- (2) Comments on Bee Guidance from Danmark_Sept 2018, Ares(2018)5730226 (hereafter 'document 2')
- (3) Comments on Bee Guidance from Germany_Sept 2018, Ares(2018)5731490 (hereafter 'document 3')
- (4) Comments on Bee Guidance from Spain_Sept 2018, Ares(2018)5732027 (hereafter 'document 4')
- (5) Comments on Bee Guidance from Finland_Sept 2018, Ares(2018)5730756 (hereafter 'document 5')
- (6) Comments on Bee Guidance from France_Sept 2018, Ares(2018)5730854 (hereafter 'document 6')
- (7) Comments on Bee Guidance from Hungary_Sept 2018, Ares(2018)5730655 (hereafter 'document 7')
- (8) Comments on Bee Guidance from Ireland_Sept 2018, Ares(2018)5730952 (hereafter 'document 8')
- (9) Comments on Bee Guidance from Lithuania_Sept 2018, Ares(2018)5730818 (hereafter 'document 9')
- (10) Comments on Bee Guidance from The Netherlands_Sept 2018, Ares(2018)5731027 (hereafter 'document 10')
- (11) Comments on Bee Guidance from Poland_Sept 2018, Ares(2018)5733713 (hereafter 'document 11')
- (12) Comments on Bee Guidance from Romania_Aug 2018, Ares(2018)5731106 (hereafter 'document 12')
- (13) Comments on Bee Guidance from Slovenia_Sept 2018, Ares(2018)5731180 (hereafter 'document 13')

- (14) Comments on Bee Guidance from Slovakia_Sept 2018, Ares(2018)5731140 (hereafter ‘document 14’)
- (15) Comments on Bee Guidance from United Kingdom_Aug 2018, Ares(2018)5732682 (hereafter ‘document 15’)
- (16) Comments on Bee Guidance from Belgium_Sept 2018, Ares(2018)5731493 (hereafter ‘document 16’)

You acknowledged receipt of this negative reply of the Directorate-General for Health and Food Safety to your application and filed a confirmatory application.

In your confirmatory application, you request a review of this position as regards the non-disclosure of the e-mail exchanges between the Commission and Member States regarding their position on the European Food Safety Authority Bee Guidance document³ on the risk assessment of plant protection products on bees. You refer to the reply of 13 November 2018 by the Directorate-General for Health and Food Safety and provide arguments explaining why, in your view, an overriding public interest in disclosure would apply to these documents.

Consequently, the scope of your confirmatory application is limited to documents 1 to 16 above.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I have to confirm the initial decision of the Directorate-General for Health and Food Safety to refuse access to documents 1 to 16, based on the exception of Article 4(3), first subparagraph (protection of the decision-making process) of Regulation 1049/2001, for the reasons set out below.

2.1. Protection of the decision-making process

Article 4(3) first subparagraph, of Regulation 1049/2001 provides that access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.

Documents 1 to 16 contain comments submitted by individual Member States on the European Food Safety Authority Guidance document on the risk assessment of plant protection products on bees. This information is protected as it has been gathered in the framework of the standing committees where the guidance document has been discussed on several occasions.

³ Published in the EFSA Journal 2013;11(7):3295

The rules applicable to comitology procedures preserve the confidentiality of the individual positions of the Member States. The Standard Rules of Procedure adopted by the European Commission pursuant to Article 9 of Regulation (EU) No 182/2011⁴ ('the Comitology Regulation') explicitly exclude the positions of individual Member States from public access. Indeed, Articles 10(2) and 13(2) of the Standard Rules of Procedure provide, respectively, that summary records of the meetings shall not mention the position of individual Member States in the committee's discussions and that those discussions shall remain confidential. In addition, Article 10 of the Comitology Regulation limits the scope of the documents to be made publicly available via the comitology register. The documents reflecting the individual positions of the Member States are not among the documents to be disclosed.

It follows that the European Commission cannot grant public access under Regulation 1049/2001 to documents containing references to the individual Member States that expressed opinions in the framework of committee meetings, as this would result in the above-mentioned confidentiality requirements being deprived of their meaningful effect. Such a public disclosure would undoubtedly affect mutual trust between the European Commission and the Member States and would therefore be at odds with the principle of sincere cooperation.

This is a concrete and realistic risk, as the public disclosure of the individual positions of Member States, against the explicit rules on confidentiality, would certainly undermine the trust between the Member States and the European Commission. This would seriously undermine the decision-making process of the European Commission as it would jeopardise the effectiveness of its work.

Therefore, I conclude that the refusal of access to documents 1 to 16 is justified based on Article 4(3), first subparagraph of Regulation 1049/2001.

3. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(3), first subparagraph, of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your confirmatory application, you argue that there is an overriding public interest in the disclosure of the comments made by each Member State on the bee guidance document of the European Food Safety Authority. You explain that the issue of the protection of pollinators is an important matter related to public health policy for European citizens and that the slow pace of the decision-making process jeopardises pollinator populations in Europe. You also state that citizens are entitled to be informed about the reasons why an efficient risk-assessment scheme is not endorsed.

⁴ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, Official Journal L 55 of 28.2.2011, p. 13–18.

Whilst I understand that you are interested in the positions of the Member States on this issue, it is not clear how access to the documents requested would enable you to establish the extent of lobbying influence, including on Member States. Nor do you provide any concrete indications of possible influence that could justify such disclosure in contravention of the above-mentioned rules applicable to committees.

Although I share the view that protection of pollinators is an important issue, I consider that, in this case, the public interest is better served by protecting the ongoing decision-making process, in accordance with Article 4(3), first subparagraph of Regulation 1049/2001.

The fact that the Commission has made many documents relating to this issue publicly available via a dedicated webpage (https://ec.europa.eu/food/plant/standing_committees/sc_phytopharmaceuticals_en) only reinforces this conclusion.

4. NO PARTIAL ACCESS

I have also examined the possibility of granting partial access to documents 1 to 16 in accordance with Article 4(6) of Regulation (EC) No 1049/2001.

However, meaningful partial access for these documents is not possible, as they are fully covered by the exception relating to the protection of decision-making process, provided for in Article 4(3), first subparagraph of Regulation 1049/2001.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the Commission
Martin SELMAYR
Secretary-General