EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Directorate E – Food and Feed Safety, Innovation
E2 – Food processing technologies and novel foods

Brussels,
DG SANTE/E2/FV/aa (2020) 5115760

Suzy Sumner
Head of the Brussels Office
Foodwatch

Advance copy by email:
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Dear Ms Sumner,

Subject: Your application for access to documents – GESTDEM 2020/4321

We refer to your e-mail dated 15 July 2020 in which you make a request for access to documents on the basis of Regulation (EC) No 1049/2001[1], registered on the same date under the above-mentioned reference number.

We also refer to our letter of 05 August 2020 extending the time limit to respond to your request according to Article 7(3) of Regulation (EC) No 1049/2001.

1. Scope of your request

In your application, you request access to:

As regards the process of implementing recommendation 2017/84, we request copies of letters, minutes of meetings and other relevant documents concerning how the Commission has advanced this process to ensure that Member States and other relevant actors have contributed to the study.

In particular we request documents that can assist in answering the following questions:
1. When and how did the COM (since January 2017) reach out to the MS regarding their contribution to the monitoring process?
2. What support has been offered by the COM to which MS (e.g. financial support and/or training of laboratory staff to set up investigation methods according to the JRC guidelines)
3. What difficulties have been encountered with the Monitoring Programme?
4. What measures and when has the COM taken to overcome these difficulties?
5. What is the COM's timetable for completing the monitoring programme?

[1] Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

6. Has the COM taken any action under Article 7 of Regulation 178/2002 on the basis of all the results of the monitoring programme now available to it? If so, which exactly? If not, why not?

We consider your request to cover documents held up to the date of your initial application, i.e. 15 July 2020.

This reply provides answers to your 6 questions and provides the documents related to the reply.

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the Commission Decision on the reuse of Commission documents. You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

2. Identification and assessment of the documents

We have identified 20 documents as falling under the scope of your request. You find below more details on which document(s) relate to which question.

You will find attached a table listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001

Having examined all the documents under the provisions of Regulation (EC) No 1049/2001 and considered the opinion of the third party, we have come to following conclusion, which is further explained below:

- Full access can be granted to documents No 4, 5, 6, 7, 8, 9, 10, 11 12, 15, 18 and 20.

- Partial access can be granted to documents No 1, 2, 3, 13, 14, 16, 17 and 19 as their full disclosure is prevented by one exception to the right of access laid down in Article 4 of the Regulation).

Reply to question 1:

The Commission reached out to the Member State as regards the implementation of Commission Recommendation (EU) 2017/84 in the meetings of the working group on Food Contact materials and working group on Industrial and Environmental contaminants (working groups of the Standing Committee on Plants, Animals, Food and Feed). There are no minutes of the working group meetings but the outcome of the discussions is reported in the Standing Committee on Plants, Animals, Food and Feed, section Novel Food and Toxicological Safety of the Food Chain.

Relevant documents: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11

Reply to question 2:

Two hands-on Training sessions have been organised by the Joint Research Centre (JRC) of the Commission

Relevant documents: 12, 13, 14, 15, 16 and 17

Reply to question 3:

- Late availability of the JRC Guidance on sampling, analysis and data reporting for the monitoring of mineral oil hydrocarbons in food and food contact materials.
- Identification of food groups which are not explicitly mentioned in Commission Recommendation (EU) 2017/84 and for which only a limited amount of data were available, but these limited data nevertheless indicated a possible significant presence of MOSH and MOAH (document 10)

Relevant documents: 7 and 10

Reply to question 4:

- It was agreed to extend the reporting deadline for occurrence data on mineral oil hydrocarbons generated in the frame of Commission Recommendation (EU) 2017/84 until 1 October 2019, because of the late availability of the JRC sampling and reporting guideline .
- In order to enable the gathering of additional occurrence data on additional food groups, it was agreed to further postpone the reporting date for occurrence data on mineral oil hydrocarbons generated in the frame of Commission Recommendation (EU) 2017/84 until 1 October 2020. The deadline is extended for the reporting of the data as well as for performing additional sampling and analyses in 2020.

Relevant documents: 8 and 11

Reply to question 5:

- the monitoring programme will be completed by 1 October 2020 (reporting deadline)

Relevant document: 11

Reply to question 6:

- A harmonised risk management approach has been agreed with the Member States at the meeting of the Standing Committee on Plants, Animals, Food and Feed, section Novel Food and Toxicological Safety of the Food Chain on 23 June 2020 as regards the presence of Mineral Oil Aromatic Hydrocarbons (MOAH) in infant formula, follow-on formula, foods for special medical purposes intended for infant and young children and young child formula on the basis of available validated results on MOAH in infant formula

- All results of the monitoring programme will be available to EFSA by 1 October 2020 (see reply question 5).
EFSA has been requested on 29 July 2020 to provide an updated exposure assessment taking into account all the occurrence data on mineral oil hydrocarbons provided in the frame of Commission Recommendation (EU) 2017/84 and to assess the toxicity studies on mineral oil hydrocarbons which have become available since the EFSA scientific opinion on mineral oil hydrocarbons in 2012 and to update the scientific opinion if necessary as regards hazard characterisation
Taking into account the outcome of this assessment, regulatory measures will be taken as regards the presence of mineral oil hydrocarbons in food to ensure a high level of public health protection.

Relevant documents: 18, 19 and 20

3. Reasons for partial access

Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001

A complete disclosure of the identified documents No 1, 2, 3, 13, 14, 16, 17 and 19 is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;

- the names/initials and contact details of other natural persons;

- handwritten signatures/abbreviated signatures of natural persons;

- other information relating to an identified or identifiable natural person such as office and phone numbers.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents mentioned above, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Therefore, partial access is granted to the above mentioned documents, expunged of personal data.

4. Means of redress

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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076B-1049 Brussels

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

Yours faithfully,

Bruno Gautrais
Head of Unit

Annexes: list of documents and 20 fully or partially disclosed documents