EUROPEAN COMMISSION
HEALTH EMERGENCY PREPAREDNESS AND RESPONSE AUTHORITY

Brussels,
HERA/KB(2021) 8627728

By registered letter
with acknowledgment of receipt[1]

Mr Alvaro Merino

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Spain

Advance copy by email:
ask+request-8557-a9612316@asktheeu.org

SUBJECT: YOUR APPLICATION FOR ACCESS TO DOCUMENTS – GESTDEMS: 2020/5416, 5428, 5426, 5600.

Dear Mr. Merino,

We are contacting you concerning your application for the access to documents- GESTDEMS: 2020/5416, 5428, 5426, and 5600.

In your request, you ask, on the basis of Regulation (EC) No 1049/2001[2], (hereafter 'the Regulation') access to:

GESTDEM 2020/5416 and 5428
"a) Meeting records (drafts, memos, invitations, appointments, cancellations) involving AstraZeneca, Sanofi-GSK, Johnson & Johnson, CureVac and Moderna officials and/or representatives.

b) Correspondence exchanged with AstraZeneca, Sanofi-GSK, Johnson & Johnson, CureVac and Moderna officials and/or representatives, including all emails, minutes,

[1] According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during to the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.

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

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reports, briefing papers or any other document received or drawn up before, during or after any meeting or conversation."

In your reply to our clarification request, you specified:

"In my request I do refer to meetings and correspondence on Covid-19 vaccines and both meetings held individually with each company and collectively with all of them".

GESTDEM 2020/5426 and 5600
"Documents in which the decision of reaching a first agreement with the pharmaceutical company AstraZeneca to purchase a potential vaccine against COVID-19 is based. Also, documents reflecting the output/conclusions or drawn up after the exploratory talks with Sanofi-GSK, Johnson & Johnson, CureVac and Moderna."

Your application concerns a very large number of documents, which need to be assessed individually.

Based on an initial assessment by the Directorate-General for Health and Food Safety, 280 documents were primarily identified as falling under the scope of your request.

Due to large number of documents, their complexity and the lengthy ongoing consultations with numerous third parties we were not able to provide you with a response within normal time limits set out in Article 7 of Regulation (EC) No 1049/2001. We sincerely apologise for any inconvenience caused by this delay.

Since the beginning of the Covid-19 pandemic and the subsequent adoption of the EU Vaccines strategy, the Commission has been receiving a significant number of access to documents requests, submitted under the Regulation, related directly or indirectly to the procurement of COVID-19 vaccines. These requests often included a very large amount of sensitive documents, which often originated from third parties, which needed to be consulted in accordance with Article 4(4) of the Regulation.

The Commission has acknowledged that the high public interest in this topic requires an adequate level of transparency. Nevertheless, the Commission has to ensure that any possible disclosure would not undermine the interests as laid down in Article 4 of the Regulation. Very importantly, the Commission has to make sure the vaccine procurement and deployment process, which is an objective of the highest public interest, is not undermined in any manner.

Your application has now been assigned to the newly established European Health Emergency Preparedness and Response authority ('HERA').

Following a careful reassessment of the scope of your request, we are contacting you to propose a workable solution for this request. Article 6(3) of the Regulation provides for the possibility to confer with the applicant informally with a view to finding a fair solution when an application concerns a very large number of documents, which is the case here.

We would like to kindly ask you to consider reducing the scope of your request to 125 documents out of the 280 documents initially identified. Our suggestion is to grant you

access to documents such as agenda, emails, minutes of the Steering Board meetings, and final contracts. The minutes of the Steering Board meetings usually include key information on negotiations and the proposed timeframe covers the core of the contacts' negotiations between the Commission and the pharmaceutical companies.

The proposed fair solution is based on the principle of proportionality in order to provide you with a reply to your request as soon as possible while avoiding that the performance of the core tasks assigned to the DG is jeopardized (i.e. to manage the COVID-19 pandemic).

Please note that the final assessment regarding the possible disclosure of the documents remains with the Commission.

In order to enable us to reply to your request as soon as possible we would ask you to provide a swift reply to our invitation to propose a fair solution, within five working days at the latest:

- by e-mail to: HERA-CONSULT-04@ec.europa.eu

If you have any questions concerning the invitation, you can contact us:

- by e-mail to: HERA-CONSULT-04@ec.europa.eu

In the absence of a reply within five working days, we will need to unilaterally restrict the scope of your application to a more manageable amount of documents 125 documents.

We would like to thank you for your understanding and we hope that the proposed solution will be acceptable to you.

Yours sincerely,

Wolfgang Philipp
Acting Deputy Head of HERA