



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES

The Director-General

Brussels
GROW.H.2/RV/mpk
grow.h.2(2021)8821694

Mr Jack Fifield
ask+request-10298-28ad0a39@asktheeu.org

Subject: Your application for access to documents - GESTDEM 2021/7462
Ref. ARES(2021)7402674

Dear Mr Fifield,

Thank you for your e-mail of 29 November 2021, which was registered at the Directorate General for Internal Market, Industry, Entrepreneurship and SMEs of the European Commission on 1 December 2021, requesting access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹.

Your e-mail requested access to documents as follows:

“Documentation containing information on why Universal Certification (notified body 2163) appears to have had their authorisation to certify PPE removed as of Version 8, when compared to Version 7 on the EC website.”

We have identified 25 documents, some with multiple attachments, falling under the scope of your request. You may find the list of these documents hereby attached in annex.

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I would like to inform you that access to 24 out of the 25 documents cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4(2), third indent of this Regulation pursuant to which “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] - the purpose of inspections, investigations and audits”.

These 24 documents are all connected to an ongoing procedure of investigation by the European Commission under Article 31 of Regulation (EU) 2016/425 on personal

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.

protective equipment² and Article 4(1) of Decision No 1/2006 of the EC-Turkey Association Council³.

Disclosure of the 24 documents at this stage would undermine the protection of the investigation in question, as it would put in the public domain ongoing exchanges disclosure of which, at this point in time, would unduly interfere with the procedure and may undermine the rights of the entities concerned.

According to Regulation (EC) No 1049/2001, an exception to the right of access must be waived if there is an overriding public interest in disclosing the document concerned, which outweighs the interest protected by the exception to the right of access. In this case the Commission has reached the conclusion that there appears to be no overriding public interest in their disclosure in the sense of the Regulation.

The possibility of granting partial access in accordance with Article 4(6) of Regulation (EC) No 1049/2001 has also been examined. However, this is not considered possible since the documents in question are covered in their entirety by the above-mentioned exception.

Additionally, one document contains personal data: names, e-mail addresses, phone numbers and addresses.

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 Community legislation regarding the protection of personal data. 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 data⁴.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable⁵.

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 a version of the documents requested in which these personal data have been redacted.

² Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC (Text with EEA relevance), *OJ L 81*, 31.3.2016, p. 51.

³ Decision No 1/2006 of the EC-Turkey Association Council of 15 May 2006 on the implementation of Article 9 of Decision No 1/95 of the EC-Turkey Association Council on implementing the final phase of the Customs Union, *OJ L 271*, 30.9.2006, p. 58.

⁴ Official Journal L 8 of 12.1.2001, p. 1.

⁵ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, *Commission/The Bavarian Lager Co. Ltd*, ECR 2010 I-06055.

In case you would disagree with this assessment, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, 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 C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)

Kerstin Jorna

Enclosures: - Table with the list of 25 documents falling within the scope of the request;
 - Document "Notification of NB 2163", dated 03/06/2021, ref. Ares(2021)7767254.