



EUROPEAN COMMISSION

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

Director-General

Brussels,
GROW I2/SPR(2022)

Mr Peter Teffer
Follow the Money
Overtoom 197
1054 HT Amsterdam
The Netherlands

Sent by email only to:
[ask+request-11497-
6e3a9dab@asktheeu.org](mailto:ask+request-11497-6e3a9dab@asktheeu.org)

Subject: Request for access to documents – GESTDEM No. 2022/3753

Dear Mr Teffer,

Thank you for your e-mail of 28 June 2022 which was registered at the Directorate-General for the Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) of the European Commission on 30 June 2022, requesting access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L145, 31 May 2001, page 43 and following).

1. SCOPE OF YOUR REQUEST

Your e-mail requested access to documents as follows:

“- The annual overviews of planned market surveillance checks for 2022, as required by article 8.6 Regulation (EU) 2018/858, for member states Belgium, Czech Republic and The Netherlands.

- Any communications between the European Commission and the respective market surveillance authorities in these three member states about the annual overviews”.

2. DESCRIPTION OF DOCUMENTS IDENTIFIED

We have identified 7 documents falling under the scope of your request. The list of these documents is in annex.

3. DISCLOSURE OF 6 DOCUMENTS

Documents 1, 2, 3, 4, 4.a. and 5 are disclosed in their entirety, apart from the redaction of personal data.

Documents 1, 2, 3, 4 and 4.a. originate from third parties. I can confirm that DG GROW has consulted according to Article 4, paragraph 4 of Regulation 1049/2001, the third parties with a view to assessing whether an exception in paragraph 1 or 2 is applicable, and has obtained their permission to disclose the documents.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

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4. NON-DISCLOSURE OF ONE DOCUMENT

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001, I regret to inform you that access to the document 1.a. 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 ("The institutions shall refuse access to a document where disclosure would undermine the protection of [...] - the purpose of inspections, investigations and audits").

According to Article 4(4) of Regulation (EC) No 1049/2001, as regards third party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

Therefore DG Internal Market, Industry, Entrepreneurship and SMEs has consulted, in accordance with Article 4(4) of Regulation (EC) No 1049/2001, the authorities of the Netherlands, who have objected to the disclosure of document 1.a., based on the exception of the protection of the purpose of inspections, investigations and audits provided for in the third indent of Article 4(2) of Regulation (EC) No 1049/2001.

The authorities of the Netherlands have stated the following: *"The objection to the disclosure of this document is based on the refusal ground as described in Article 4, paragraph 2, third indent, of Regulation (EC) No. 1049/2001 regarding the protection of the purpose of inspections, investigations and audits. The Netherlands believes that disclosure of document 1.a. 2022-02-18 From NL to EC DG GROW could give the relevant manufacturers time to prepare themselves or give them insight on how to respond to the situation. In addition, it provides manufacturers who have not been selected with insight that they have not been included in the checks. Therefore, we believe that the exception ground under Article 4, paragraph 2, third indent, of Regulation (EC) No. 1049/2001 is applicable and the request for the disclosure of document 1.a. 2022-02-18 From NL to EC DG GROW should be refused."*

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 document in question is covered in its entirety by the above-mentioned exception.

5. PROTECTION OF PERSONAL DATA

With regard to the documents listed above, a complete disclosure of the identified documents 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.

Article 9(1)(b) of the Data Protection Regulation¹ 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 arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I 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, 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.

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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:

¹ 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, OJ L 295, 21.11.2018, p. 39.

European Commission
Secretariat-General
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B-1049 Bruxelles,
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Kerstin Jorna
e-signed

Annexes: Document register
6 documents