



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
The Director-General

Brussels,
ENV/B.2

Mr Laurent Gaberell
Av. Dumas 23
1206 Genève
SWITZERLAND

Sent by email with acknowledgement of receipt to:

ask+request-11566-895cda7e@asktheeu.org

Dear Mr Gaberell,

Subject: Your application for access to documents – Ref GestDem No 2022/4037

We refer to your request for access to documents, dated 13 July 2022 and registered under the above-mentioned reference number, as well as to our holding reply Ref. Ares(2022)5604737 – 05/08/2022. We sincerely apologise for the delay in replying to your request.

You requested access to:

“- any documents (including emails, briefings, reports, as well as attachments) received from (or sent to) representatives of Member States since October 2020 that concern or make mention of the commitment in the Chemicals Strategy for Sustainability that the EU will “lead by example, and, in line with international commitments, ensure that hazardous chemicals banned in the European Union are not produced for export, including by amending relevant legislation if and as needed.

- a list of meetings held (and minutes of those meetings when available) with representatives of Member States since October 2020 at which there was any discussion of the commitment in the Chemicals Strategy for Sustainability that the EU will “lead by example, and, in line with international commitments, ensure that hazardous chemicals banned in the European Union are not produced for export, including by amending relevant legislation if and as needed.

- any documents (including emails, briefings, reports, as well as attachments) received from (or sent to) other Departments and executive agencies from the European Commission (including but not limited to DG AGRI, DG COMP, DG ECFIN, DG GROW, DG RTD, DG TRADE) since October 2020 that concern or make mention of the commitment in the Chemicals Strategy for Sustainability that the EU will “lead by example, and, in line with international commitments, ensure that hazardous chemicals banned in the European Union are not produced for export, including by amending relevant legislation if and as needed.

- a list of meetings held (and minutes of those meetings when available) other Departments and executive agencies from the European Commission (including but not limited to DG AGRI, DG COMP, DG ECFIN, DG GROW, DG RTD, DG TRADE) since October 2020 that concern or make mention of the commitment in the Chemicals Strategy for Sustainability that the EU will “lead by example, and, in line with international commitments, ensure that hazardous chemicals banned in the European Union are not produced for export, including by amending relevant legislation if and as needed.”

We identified the following documents to fall in the scope of your request:

- 1) Contribution to the briefing - Chemicals Strategy, Meeting EVP Timmermans - Ms Zakia Khattabi, Belgian Minister for Climate, Environment and Sustainable Development, 22 April 2021
- 2) Letter from the Belgian Minister for Environment, Climate, Sustainable Development and Green Deal to the European Commissioner for Environment, Oceans and Fisheries, 5 April 2022
- 3) Letter from the European Commissioner for Environment, Oceans and Fisheries to the Belgian Minister for Environment, Climate, Sustainable Development and Green Deal, 1 July 2022

Having examined these documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, we have come to the following conclusions:

A complete disclosure of all 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 and contact information of Commission staff members not pertaining to the senior management;
- handwritten signatures of natural persons;
- other information relating to an identified or identifiable natural person (email addresses), which has been redacted.

In your application, you indicate that your address is in Switzerland. Transfers of personal data from the Commission to countries that are not members of the European Economic Area (EEA), or to international organisations are regulated under Chapter V of the Data Protection Regulation.

According to Article 47(1) of this Regulation, a transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection and where the personal data are transferred solely to allow tasks within the competence of the controller to be carried out.

Based on the information available, the country of your residence is recognised by the Commission as ensuring an adequate level of protection. However, we would further like to inform you that 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, 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.

Furthermore, and as regards document no 2, originating from a third party (Member State): the author of this document has objected to disclosure of specific parts of the document that they sent to the Commission and has motivated their position as follows: *“Belgium opposes the disclosure of the legal analysis attached to the letter, because this is not the finalized study (two other versions have been transmitted by the law firm) and because such dissemination would risk compromising the internal decision-making process which is still ongoing. The study focuses on potential measures that can be adopted by the Minister within the framework of Belgium's environmental and economic policy; since the standard is a product standard, the Commission could not disclose this study at this stage without affecting the public interest with regard to Belgium's economic policy (see exception provided for in Article 4(1)(a), 4th indent). In addition, the legal analysis transmitted on a voluntary and confidential basis by the Minister to Commissioner Sinkevicius constitutes a legal opinion (not definitive since two new versions of it have been submitted by the firm) as covered by Art. 4, § 2, second indent. Although the Minister is in favour of greater transparency, it cannot lead to neutralizing the decision-making process, which is still in its infancy at the moment. As a reminder, the draft standard is not final at this stage and providing information before it is "official" could jeopardize the effectiveness of the regulatory process.”*

Based on this reasoning by the consulted third party, I conclude that full disclosure of document 2 would undermine the protection of legal advice. Therefore, the disclosure of the parts of the document no 2 that have been identified as containing legal advice is prevented by the exception to the right of access laid down in Article 4(2), second indent, of Regulation (EC) No 1049/2001, as this disclosure would be harmful to the Member State's interest in seeking legal advice and receiving frank, objective and comprehensive advice. The risk of that interest being undermined is reasonably foreseeable and not purely hypothetical.

Finally, and as regards document no 1, we note that parts of it have been blanked out as they refer to subject matters that are not within the scope of this request, so that only the parts that fall within the scope of the request are disclosed.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review its position on the matters already mentioned. 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
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076

B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Electronically signed

Florika FINK-HOOIJER

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