Subject: Your application for access to documents
Ref. EASE 2023/3654

Dear Mr Schenten,

We refer to your email of 26/06/2023, in which you make a request for access to documents, registered on 26/06/2023 under the above-mentioned reference number.

Your application was as follows:

“In accordance with Articles 2 and 6(1) of Regulation 1049/2001, Article 3 of Regulation 1367/2006, and Article 42 of the Charter of Fundamental Rights ClientEarth AISBL submits a request for access to documents, which were prepared in the context of the legislative initiative regarding REACH (This initiative is mentioned and described at: https://ec.europa.eu/environment/chemicals/...).

We hereby request access to all reports whether in draft form or finalised of the studies conducted by contractors or the JRC in relation to the REACH revision, including but not limited to the studies listed in the link: https://ec.europa.eu/environment/pdf/chemical...

In this context, we expressly request access to the (draft) study to support the impact assessment for potential amendments of the REACH Regulation to extend the use of the generic risk management approach to further hazard classes and uses, and to reform REACH authorisation and restriction (done by VVA).

Further, we mention that we do not request access to the following documents, to which we already have access:


Study on the establishment of a European audit capacity to ensure compliance and
effective national control and enforcement of the REACH regulation and on the extension
of that capacity and of those standards to CLP, POPs and PIC Regulations – Final

We urge you to take due account of the judgment of the Court of Justice of the European
Union of 4 September 2018 in Case C-57/16 P (https://eur-lex.europa.eu/legal-
content/...) , in which the Court held that documents drawn up in the context of an impact
assessment procedure for a legislative proposal constitute legislative documents that
should be made directly accessible to the public pursuant to Article 12(2) of Regulation
No 1049/2001 and that access should not be denied on request (see paragraphs 84-95).

We note that the Commission’s Better Regulation Guidelines state that “[t]he purpose of
evaluations, namely to promote inputs to decision-making, organisational learning,
accountability/transparency and efficient resource allocation, can only be achieved if the
resultant information reaches all interested parties.” (Tool #50 on Disseminating the
evaluation findings). It is in the spirit of these objectives that we make this request to the
Commission.

Finally, we request that the document/information falling within the scope of this request
to be made publicly available on the Commission’s documents register, in accordance
with Articles 11 and 12 of Regulation 1049/2001 and Article 4 of Regulation
1367/2001.”

Please note that due to the scope of your request covering also areas falling under the
responsibility of other Directorates-General, this reply relates only to the documents held
by and specifically under the responsibility of DG Internal Market, Industry,
Entrepreneurship and SMEs. You will receive the replies from the other respective
Directorates-General in due course.

We have identified three documents under the responsibility of DG Internal Market,
Industry, Entrepreneurship and SMEs that fall in the scope of your request. Please see the
details in the attached document register. We understand that DG Environment will reply
to you on the documents under their responsibility.

Having examined the documents requested under the provisions of Regulation (EC) No
1049/2001 regarding public access to documents, we have come to the following
conclusion.

Protection of decision-making process:

- The three documents may be partially disclosed.

Parts of the documents relate to a matter where the decision has not been taken by the
institution. The disclosure of these parts of the documents would seriously undermine the
institution’s decision-making process. Therefore, the exception to the right of access laid
down in Article 4(3) first subparagraph of Regulation 1049/2001 applies.

More specifically, the redacted parts of all the documents contain information related to:

- the analysis of impacts of the policy options considered, and the related
  methodology;
- the comparison of impacts across the policy options considered;
• monitoring indicators;
• the conclusions drawn from such analysis.

Based on the case law of the Court of Justice (1), and since these documents relate to a decision that has not yet been taken by the Commission, an individual assessment of the requested documents was made and it was established that there is a risk that the Commission’s decision-making process would be seriously undermined, if the redacted parts were disclosed. Such a risk is due to the following factors: the precise stage of the decision-making process in question at the time of this request; the specific context in which that process takes place; and the issues still to be discussed internally.

In particular, the internal discussion on policy options, which have been analysed in the requested documents that support the ongoing decision-making process, is still not finalised. If released now, the content of the redacted parts could give rise to unnecessary misunderstandings.

The studies are aimed to inform a decision which the College of Commissioners is expected to take in the future, as indicated in the 2023 Commission Work Programme. The final version of the documents will be published in their entirety, in line with well-established practices, as soon as the College of Commissioners will have adopted the relevant legislative proposal.

Considering the specific context in which this decision-making process takes place, the revision of REACH contributes to deliver on the ambitious objectives set under the European Green Deal, which aims to transform the EU into a fair, clean and climate-neutral, resource-efficient and competitive economy. Achieving such objectives requires strong evidence, clarity of solutions and political determination. Most of the issues covered by this revision are of a wide-ranging nature and are still analysed by Commission services. The content of the requested studies is intrinsically linked to such issues that the College of Commissioners has not yet decided upon.

Consequently, considering the stage of the decision-making process and its specific context, as well as the issues still to be discussed internally, the disclosure of the above-mentioned redacted parts of the requested documents would seriously undermine the preparation of the proposal for the revision of the REACH Regulation and the related Commission decision-making process.

Therefore, the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 applies to the redacted parts of the documents.

The exceptions laid down in Article 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. We have examined whether there could be an overriding public interest in the disclosure of the three documents, but we have not been able to identify such an interest.

Protection of personal data:

- Some parts of the three documents contain personal data that have been redacted.

A complete disclosure of these 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

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(1) Judgment of the Court of Justice of 4 September 2018, C-57/16 P, ClientEarth v. Commission
names/initials and contact information of staff members not pertaining to the senior management.

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 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 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 to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

by asking for a review via your portal (account) (available only for initial requests submitted via the portal account),

or by mail:
European Commission
Secretariat-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,

(e-signed)
Kerstin Jorna

Encl.: Document register
Three documents partially disclosed

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(3) https://www.ec.europa.eu/transparency/documents-request