

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Acting Director-General

Brussels,
SANTE/E1/LV/as_sante.ddg2.e.1(2015) 3056719

By registered letter with acknowledgment of receipt

Advance copy by email to:

ask+request-2012-f315a557@asktheeu.org

Dear Mr Staes,

Subject: Your application for access to documents – Ref GestDem No 2015/2821

We refer to your email dated 21 May 2015, in which you made a request for access to documents, registered on the same day under the above mentioned reference number.

Your application concerns “all the documents, as well as emails or other any other correspondence or records related to the Commission’s internal discussion which lead to the publication of the proposal” [COM(2015) 177 for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1829/2003 as regards the possibility for the Member States to restrict or prohibit the use of genetically modified food and feed on their territory], and “a list of meetings with detailed minutes and any other reports of such meetings that took place both within the Commission (e.g. between different units and/or cabinets), as well as other meetings in connection with the issue, including with stakeholders (e.g. Member States’ representatives, government representatives of other countries, industry representatives, NGOs, representatives of chambers of commerce etc.)”.

This letter is a partial reply to your request, covering the period until 31 January 2015. Indeed, we will not be able to provide an exhaustive reply to your request by the deadline, which expires on 3 July 2015. This is due to the need to examine a large number of files in order to identify the documents falling under its scope. Additionally, the coordination of several departments within the Commission is necessary. Please rest assured that we are doing our best efforts to complete this reply as soon as possible.

Mr Bart Staes
Member of the European Parliament
Anselmostraat 51
B-2018 Antwerpen

We have found 26 documents, including annexes to main documents, falling under the scope of your request during the period concerned. They are listed in Annex 0 to this letter.

Concerning meetings with third parties, I would like to make clear that the Commission did not consult third parties in the preparation of its proposal. However, third parties may have taken the opportunity of a meeting with the Commission to raise concerns, questions or wishes in relation to the review of the decision-making process on GMOs. Therefore, in order to determine which documents related to meetings with third parties fall under the scope of your request, we took into consideration those meetings where we are sure that this point was raised, even if briefly.

Having examined the requested documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that 21 of them can be partially disclosed and that access to 5 of them must be refused.

You will find the 21 partially disclosed documents attached to this letter, and numbered in accordance with the order given in Annex 0 to this letter. The justifications for partial disclosure and refusal of disclosure are outlined in detail below and briefly recapitulated in Annex 0. Please also note that, as a rule, only those parts of the disclosed documents that fall under the scope of your request are disclosed.

1. Protection of personal data

Personal data has been blanked out in 18 documents, identified in Annex 0.

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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable².

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 that it cannot be assumed

¹ OJ L 8 of 12.1.2001, p. 1.

² Judgment of the Court of Justice of the EU of 29 June 2010 in case C-28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

2. Protection of the Commission's decision-making process

Document No 1.1 – Voting behavior of the Member States

The part of this document that has been blanked out contains the voting positions of each Member State on draft decisions of authorization of GMOs – over the period from December 2003 to July 2014 – in the relevant Standing Committee, in the Council and in the Appeal Committee.

The exceptions of Article 4 of Regulation (EC) No 1049/2001 must be interpreted taking into account the specific provisions which apply to access to information and confidentiality in the context of comitology procedures.

The Commission notes in this respect that Regulation (EU) No 182/2011³, laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, does not provide for public or privileged access to the individual positions of Member States' representatives, nor to detailed minutes of committee meetings. Indeed, Article 10(5) of Regulation (EU) No 182/2011 only envisages public access, through a specific register, to references of summary records of committee meetings (not to those summary records themselves).

Furthermore, the Standard Rules of Procedure for, respectively, Committees⁴ and the Appeal Committee⁵, which the Commission adopted pursuant to Article 9 of Regulation (EU) No 182/2011, contain specific confidentiality requirements which explicitly exclude the positions of individual Member States' representatives from public access:

- Articles 10(2) and 13(2) of the Standard Rules of Procedure for Committees provide, respectively, that summary records of meetings *shall not mention the position of individual members⁶ in the committee's discussions*, and that *the committee's discussions shall be confidential*;
- Similarly, Articles 9(2) and 12(2) of the Rules of Procedure for the Appeal Committee provide, respectively, that *summary records shall not mention the individual position of the*

³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, Official Journal L 55 of 28.2.2011, p. 13.

⁴ Standard Rules of Procedure for Committees – Rules of Procedure for the [name of the committee] Committee, Official Journal C 206/11 of 12.11.2011, p. 11.

⁵ Rules of Procedure of the Appeal Committee (Regulation 182/2011) – Adopted by the appeal committee on 29 March 2011, Official Journal C 183/2011 of 24.6.2011, p. 13.

⁶ Pursuant to Article 5(1) of the Commission's Standard Rules of Procedure for Committees, each Member State shall be considered to be one member of the committee.

members in the appeal committee's discussions, and that the committee's discussions shall be confidential.

It follows that the Commission cannot grant public access under Regulation (EC) No 1049/2001 to documents reflecting the positions that individual Member States' representatives expressed in the framework of committee meetings, as this would result in the above-mentioned confidentiality requirements being deprived of their meaningful effect.

In its *Corporate Europe Observatory* judgment⁷, the General Court confirmed that minutes circulated to participants in the framework of an advisory committee meeting which was not open to the public, are to be considered as "internal documents" within the terms of Article 4(3) of Regulation (EC) No 1049/2001, and deserve protection on that basis.

The same reasoning applies, *a fortiori*, to the positions of Member States' representatives expressed in the framework of such committee meetings.

If the decision-making process was to be considered as closed in view of the adoption of the review on 22 April 2015 (COM(2015) 176 and 177) – quod non –, I consider, alternatively, that revealing the names of individual Member States alongside their positions would nevertheless be covered by the exception provided for in Article 4, paragraph 3, second subparagraph, for precisely the same reasons as explained above. Moreover, disclosing those elements, consisting of opinions for internal use as part of preliminary deliberations, would seriously harm further Commission decision-making processes as regards authorisations of genetically modified organisms.

Documents Nos 2, 3, 4, 5, 7, 8.1, 11.1, 12, 13.1, 13.2, 14, 14.1 and 17.

These documents and parts of documents contain preliminary discussions on possible options on the review of the legislation applicable to GMOs.

Disclosure of the documents requested would undermine the protection of the decision-making process of the Commission. Therefore the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 applies to this document.

In this respect, it has to be recalled that, while the review has been adopted on 22 April 2015, the decision-making process for the Commission has only just started, considering its involvement in the ordinary legislative procedure. This involvement encompasses defending the proposal at working level at the Council (Council Working Party) and in the relevant Committees of the European Parliament. Moreover, the Commission has to formally issue an opinion in first reading and second reading on the amendments of the co-legislators (Article 294(6), (7)(c) TFEU). Where the Commission delivers a negative opinion on the Council's amendments, the latter has to adopt its amendments unanimously (Article 294(9) TFEU). Moreover, the Commission can alter its proposal any time during the legislative procedure, as long as the Council has not acted (Article 293(3) TFEU).

⁷ Judgment of the General Court of 7 June 2013 in case T-93/11, *Stichting Corporate Europe Observatory/European Commission*, paragraphs 32-33.

Disclosing the documents at this stage would seriously undermine the Commission's decision-making process as it would reveal views and policy options which are currently under consideration in the legislative debate. The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure, as long as the decision-making process is still ongoing.

If the decision-making process were nevertheless considered to be closed following the adoption of the Commission's proposal – quod non – I consider, in the alternative, that the refused documents and parts of documents would nevertheless be covered by the exception provided for in Article 4(3), second subparagraph, for precisely the same reasons as explained above. Indeed, disclosing those documents, reflecting opinions for internal use as part of preliminary deliberations, would seriously harm further Commission decision-making processes as regards the review of the legislation on GMO.

Regarding documents No 7, 11.1, 12, 13.1 and 13.2 for which disclosure is entirely refused, we have also considered whether partial access could be granted. However, it appears that their entire text is covered by the aforementioned exception.

The exceptions laid down in Article 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of these documents. In our view, the public interest in making public the voting positions of the Member States on authorisations of GMOs does not outweigh the harm disclosure would cause to the Commission's decision-making process. Moreover, while it is acknowledged that the issue of GMOs raises considerable interest in the public and in the media, this does not outweigh the harm to the Commission's decision-making process if all internal considerations of policy approaches on a file that is in the decision-making process were publicly released.

3. Final considerations

Please note that some of the documents disclosed emanate from third parties. They are disclosed for information only and cannot be re-used without the agreement of the originators, who hold a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.


You may reuse the Commission documents disclosed free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

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 its 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
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



Ladislav Miko
p.o. B. VAN GOETHEM

Annexes:

- Annex 0: recapitulative table of the documents covered by the request until 31 January 2015;
- Annexes Nos 1 to 20: documents disclosed.