



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,
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***By registered letter with
acknowledgement of receipt***

***Advance copy by e-mail to
ask+request-263312855cb4@asktheeu.org***

Dear Mr Harmsen,

Subject: Your application for access to documents – Ref GestDem No 2016/926

We refer to your e-mail dated 25 February 2016 in which you made a request for access to documents, registered on the same day under the above-mentioned reference number.

You have requested access to documents "*on the topic of 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, all correspondence (including emails), agendas, minutes of meetings and any other reports of such meetings relating the Inter-Service Consultation (between January 2015 and May 2015)*".

The Inter-Service Consultation (ISC) is, in the Commission, a formalized process. The ISC concerning the legislative proposal you are referring to was launched on 30 March 2015. We have taken a broad interpretation of the scope of your request, encompassing not only the ISC strictly speaking, which is a process involving only Commission departments, but also the subsequent discussions between cabinets of Commissioners.

As a result, we have identified 14 documents falling under the scope of your request, between 30 March 2015 and 17 April 2015. They are listed in Annex 0 to this letter.

Having examined these documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that 1 of them can be fully disclosed, 5 of them can be partially disclosed and that access must be refused to 8 of them. The justifications for partial disclosure and refusal of disclosure are exposed in detail below and shortly recapitulated in Annex 0.

Mr Vincent Harmsen
Pieter Schroonsstraat 58
1830 Machelen
Belgium

You will find the 6 fully or partially disclosed documents attached to this letter. I draw your attention to the fact that these documents, with the exception of document No 1.3, have already been disclosed in the context of another request for access to documents (reference Gestdem 2015/2821) made through the Platform "Ask the EU"; moreover, that previous request had a wider scope than yours and you may therefore find more documents concerning the abovementioned legislative proposal on the website of the Platform.

Protection of personal data

Documents No 1, 2, 3 and 4 contain personal data. Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document or part of it has to be refused if the 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 data.¹

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable.²

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 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.

Protection of the Commission's decision-making process

Documents Nos. 1.1, 1.2, 5, 5.1, 6, 7, 8, 8.1 and 8.2 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 was adopted on 22 April 2015, the decision-making process for the Commission is still ongoing, 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

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-6055.

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(2) TFEU).

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.

We have also considered whether partial access could be granted to these documents. However, it appears that, with the exception of document No 6, which is partially disclosed, all of these documents are entirely covered by the aforementioned exception, as well as, in the case of document No 7, by the exception concerning the protection of court proceedings and of legal advice (cf. below).

Protection of court proceedings and of legal advice

Article 4(2), second indent, of Regulation (EC) No 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of court proceedings and legal advice.

Documents Nos. 2, 6 and 7 contain elements relative to the ongoing EU-US WTO dispute on GMOs (WTO DS 291). The disclosure of these elements would weaken the EU's position in this dispute, which is still not settled, as it would provide the USA with indications on the EU's position and approach.

Further indication of the sensitive character of the legal advice in document No 2 is the fact that this document has been classified as "limited".

Overriding public interest in disclosure

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents concerned.

While it is acknowledged that the issue of GMOs raises considerable interest in the public and in the media, this does not outweigh in our view the harm to the Commission's decision-making process and to court proceedings and legal advice that the disclosure of the documents concerned by these exceptions would cause.

Other considerations

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 5/282
B-1049 Bruxelles
or by e-mail to: sg-acc-doc@ec.europa.eu

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For the Director General absent,
Martin SEYCHELL
Deputy Director General

Yours faithfully,


Xavier Prats Monné

Annexes:

- Annex 0: Table listing the documents covered by your request;
- Documents Nos. 1, 1.3, 2, 3, 4 and 6 (six documents) as referred to in Annex 0.