



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,
SANTE/E4/AS(2018)2311209

**By registered mail with
acknowledgment of receipt**

Ms Clémentine Bonvarlet
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France

Advance copy by e-mail:
ask+request-5269-b631ab11@asktheeu.org

Dear Ms Bonvarlet,

Subject: Your application for access to documents – Ref. GestDem 2018/1680

We refer to your email dated 20 March 2018 registered on the same date with the above mentioned reference number, by which you request access to documents on the basis of Regulation (EC) No 1049/2001¹.

1. Scope of your request

In your request, you asked access on the basis of Regulation (EC) No 1049/2001 to:

"all correspondance (including emails), agendas, minutes of meetings and any other reports of such meetings between officials/representatives/Commissioner/cabinet member of DG SANTE and the members of the Standing Committee on Plants, Animals, Food and Feed, regarding EFSA Guidance Document on the risk assessment of plant protection products on bees (Apis mellifera, Bombus spp. and solitary bees"

In our letter of 28 March 2018 registered as Ares(2018)1783594, we invited you to specify the scope of your request. In reply to our letter, with email of 3 April 2018, you clarified your request asking access to the above mentioned documents written between July 2013 and April 2018.

¹ Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

2. Identification and assessment of the concerned documents

We have identified 29 documents falling under the scope of your request.

Having examined these documents, we have come to the conclusion that some of the documents may be only partially disclosed as their full disclosure is prevented by two of the exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

In particular:

- i. partial access can be granted to 2 documents that are indicated with "Partial" in the list of documents and numbered 1 and 2;
- ii. 26 documents numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 and indicated with "No" in the list of documents are protected in their entirety.

We would like to inform you that the agendas and summary reports from all Standing Committees on Plants, Animals, Food and Feed are available online at the following Commission webpage:

https://ec.europa.eu/food/plant/standing_committees/sc_phytopharmaceuticals_en.

The documents that can be partially released and the list of documents containing the result of the assessment carried out on their content on the basis of Regulation (EC) No 1049/2001 are published on the following Commission webpage:

<https://webgate.ec.europa.eu/dyna/extdoc>

You can view these documents by entering the GestDem reference of your request ("2018/1680") in the search box at the top of the page.

Alternatively, you can click on "view documents per request" and search on the left column for the GestDem reference of your request ("2018/1680").

You may re-use Commission documents 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.

3. Reasons for refusal

- *Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001.*

Documents 1 and 2 contain personal data, such as the names of staff of the Commission and third parties. 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 EU legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001².

² 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 (OJ L 8, 12.1.2001, p. 1).

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable.³ 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, partial access is granted to the requested documents, expunged of personal data.

- *Protection of the decision-making process in accordance with Article 4(3), first indent, of Regulation (EC) No 1049/2001.*

Member States have to date not taken note of the EFSA Guidance Document on the risk assessment of plant protection products on bees in the framework of the Standing Committees on Plants, Animals, Food and Feed. The decision-making process is therefore currently fully open and ongoing.

Document 3 is the Summary report from a Workshop organised in December 2013 on the EFSA Guidance Document on the risk assessment of plant protection products on bees. Member States representatives were present at the Workshop and the Summary report contains information on the positions of individual Member States.

Documents 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 contains comments submitted by individual Member States on the EFSA Guidance Document on the risk assessment of plant protection products on bees. This information is protected as it has been gathered in the framework of the Standing Committees, where the Guidance document has been discussed on several occasions.

The Standard Rules of Procedures for the Standing Committees⁴, which the Commission adopted pursuant to Article 9 of Regulation (EC) No 182/2001⁵, explicitly exclude the positions of individual Member States from public access. In fact, Articles 10(2) and 13(2) of the Standard Rules of Procedure affirm, respectively, that summary records of the meetings shall not mention the position of individual Member States in the 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 1049/2001⁶ to documents containing references to the individual Member States that expressed opinion in the framework of committee meetings, as this would result in the above-mentioned confidentiality requirement being deprived of its meaningful effect.

³ 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.

⁴ OJ C 206, 12.7.2011, p. 11.

⁵ 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, OJ L 55, 28.2.2011, p. 13.

⁶ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.05.2001, p. 43.

In its *Corporate Europe Observatory* judgment⁷, the General Court confirmed that minutes circulated to participants in the framework of a meeting which was not open to the public, are to be considered as “*internal documents*” within the meaning 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 expressed in the framework of Standing Committees’ meetings and consequently referred to in documents such as minutes of other meetings.

In fact, the Member States and the Commission must be free to explore all possible options in preparation of a decision within Standing Committees free from external pressure. Public disclosure of the references to individual Member States would prevent Member States from frankly expressing their views in the framework of Standing Committees meetings and thus seriously undermining the possibility of the Commission to explore all possible options in preparation of a decision and impairing the quality of the decision-making process.

We have considered whether partial access can be granted to the documents but the exception laid down in Article 4(3), first paragraph, of Regulation (EC) No 1049/2001 applies to the documents in their entirety.

4. Overriding public interest

The exceptions to the right of access provided for in Article 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested documents. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001. The public interest in this case is rather to protect the Commission’s decision-making process.

5. Means of redress

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 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 email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Xavier Prats Monné

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