



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director General

Brussels
SANTE/G2/EC/ise (2018) 7294067

By registered letter with acknowledgment of receipt

Mr Peter Teffer
EUobserver
Rue Montoyer 18B
1000 Brussels
Belgium

Advance copy by email: ask+request-6083-70bcaud9@asktheeu.org

Dear Mr Treffer,

Subject: Your application for access to documents – Ref GestDem No 2018/5926

We refer to your e-mail dated 02/11/2018 in which you make a request for access to documents, registered on 05/11/2018 under the above mentioned reference number.

1. In your request, you ask on the basis of Regulation (EC) 1049/2001 access to:

- "- A list of which member states have notified by 1 November 2018 the European Commission on the implementation of the provisions on penalties, as required by article 52 of Regulation (EU) 2016/1012 of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof*
- The content of all member states' notifications of the provisions on penalties, as required by article 52 of Regulation (EU) 2016/1012*
- The content of any communication between the European Commission and member states about the provisions on penalties from article 52 of Regulation (EU) 2016/1012*
- The list of the websites referred to in point (c) of paragraph 2 of article 39 (Designation of competent authorities)".*

For what concerns the part of your request in the last indent, we would like to inform you that information submitted by EU Member States, Norway and Switzerland in accordance with Regulation (EU) 2016/1012¹, including that required by Article 39(3), is published at the Commission webpage: https://ec.europa.eu/food/animals/zootechnics/member_states_en.

In addition, the Commission has received five notifications under Directive (EU) 2015/1535 from the following Member States which are also available on the internet:

1. Austria:
 - a. Notification: 2018/0472/A on Act on agricultural animal breeding (Styrian Animal Breeding Act):
<http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2018&num=472>
 - b. Notification: 2018/0596/A on Act on animal breeding in Tyrol (Tyrolean Animal Breeding Act 2019):
<http://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2018&num=596&mLang=EN>
2. Germany, Notification: 2018/0256/D on Act reforming animal breeding law:
<http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2018&num=256>
3. Spain, Notification: 2018/0164/E on Draft Royal Decree laying down zootechnical standards on the rearing, trade and entry into the Union of pure-bred breeding animals, hybrid breeding pigs and their reproductive material, and updating the national programme for the conservation, improvement and promotion of livestock breeds:
<http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2018&num=164>
4. Slovakia, Notification: 2018/599/SK on a Draft Act on selective breeding and animal breeding and on amendments to certain acts:
<http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2018&num=599>

2. Identification and assessment of the relevant documents

We have identified 6 documents falling under the scope of your request:

1. Belgium: e-mail of 29 October 2018, titled: Information de la Commission sur un nouveau texte [Ares(2018)5551921];
2. Denmark: letter of 31 October 2018, ref.: BEBTH, J.nr. 2018-15-31-00432, titled: Underretning af EU-Kommissionen om fastsættelse af strafferegler i relation til forordning 2016/1012 [Ares(2018)5638762];

¹ Regulation (EU) 2016/1012 of the European Parliament and of the Council of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No 652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding ('Animal Breeding Regulation') (OJ L 171, 29.6.2016, p. 66).

3. Spain: e-mail of 8 November 2018, from DG de Producciones y Mercados Agrarios, titled: Notification on article 52 and 68 of Regulation 2016/1012 – SPAIN [Ares(2018)5794287];
4. Lithuania: letter of 19 November 2018, ref.: 2D-3769 (11.26), from Mrs Ausma Miškinienė, Vice Minister of Agriculture, titled: del Europos Parlamento ir Tarybos reglamento (ES) 2016/1012 [Ares(2018)5914396];
5. Sweden: letter of 30 October 2018, titled: Uppgifter enligt förordningen om djuravel [Ares(2018)5659860];
6. Slovenia: letter of 19 September 2018, ref.: 33205-143/2018/1, titled: Obvestilo o izdaji Uredbe o izvajanju uredbe (EU) o reži zivali, ki vključuje pravila o kaznih – implementacija Uredbe 2016/1012/EU [Ares(2018)4839403].

Since documents referred to in points 1, 2, 3, 4, 5 and 6 originate from Member States competent authorities, the originators of the documents have been consulted, in accordance with Article 4(5) of Regulation (EC) No 1049/2001, to assess whether they agree with disclosure of the documents originating from their organisation or, on the contrary, object to disclosure as it would affect one of the interests protected under Article 4, paragraphs 1 or 2 of Regulation 1049/2001.

Having examined these documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and considered the opinion of the Member States, we came to the conclusion that they may be only partially disclosed as their full disclosure is prevented by the exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

You will find in annex to this letter all documents above listed expunged of personal data.

You may reuse the documents requested 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. Documents originating from third parties cannot be re-used without the agreement of the originators. They do not reflect the position of the Commission and cannot be quoted as such.

3. Reason 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*

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 2018/1725² of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and

² Official Journal L 205 of 21.11.2018, p. 39.

agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

All documents to which you have requested access contain personal data such as names and surnames of Commission and Member States competent staff as well as of the stakeholders concerned.

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data³.

In its judgment in Case C-28/08 P (Bavarian Lager)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, 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

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, Peter Novak v Data Protection Commissioner, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560

⁴ Judgment of 29 June 2010 in Case C 28/08 P, European Commission v The Bavarian Lager Co. Ltd, EU:C:2010:378, paragraph 59.

⁵ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

4. Means of redress

In accordance with Article 7(2) of Regulation 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 Secretariat-General of the Commission at the following address:

European Commission

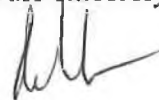
Secretariat-General

Unit C.1. 'Transparency, Document Management and Access to Documents'

BERL 5/282

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Anne Bucher', with a stylized flourish at the end.

Anne Bucher