



EUROPEAN COMMISSION

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Mr Martin Pigeon
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Belgium

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM No 2019/1887;
2019/1889; 2019/1890; 2019/1892; 2019/1894; 2019/1902; 2019/1913;
2019/1914; 2019/1916; 2019/1918; 2019/1919; 2019/1920; 2019/1921;
2019/1922; 2019/1923.**

Dear Mr Pigeon,

I refer to your email of 22 May 2019, registered on 24 May, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation (EC) No 1049/2001').

Please accept our apologies for this late reply.

1. SCOPE OF YOUR REQUEST

In your initial application of 25 March 2019, addressed to the Directorate-General for Research and Innovation, you submitted several access to documents requests whereby you requested access to:

‘[...] from the Research Commissioner Moedas and/or members of his cabinet, as well as from DG RTD, any document matching the following criteria:

- between January 1st 2015 and today (22nd of March 2019),

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

- including briefings, reports, correspondence (email or other), including all attachments to the said correspondence,
- a list of all meetings, as well as agendas and minutes or any other reports of such meetings,
- from, to or mentioning the lobby group Primary Food Processors, or any body acting on its behalf or together with it’.

The entities mentioning the lobby group Primary Food Processors, as determined by the Directorate-General for Research and Innovation are the following: Bio-based Industries Consortium; European Bioeconomy Alliance; Europabio; Bio-Based Industries Joint Undertaking; Confederation of European Paper Industries; European Bioplastics; the lobby group ePURE; Bayer, BASF, AB Inbev, Cargill, DSM, Dupont, Novozymes, Novamont, P&G, Total, Unilever, Südzucker, Biochemtex; the lobby group Primary Food Processors; the European Association of Sugar Producers; the lobby group COPA-COGECA; the lobby group European Seeds Association; the lobby group FEDIOL; the Confederation of European Forest Owners; the lobby group Starch Europe; the Forest-based Sector Technology Platform, or anybody acting on its behalf or together with them.

After examination of the scope of your request, it appeared that your applications concerned a very large number of documents, which would need to be assessed individually. Please note that, the General Court recognised in its judgement in *Ryanair v Commission* that the provisions of Article 6(3) cannot be evaded by splitting requests.³ Hence, your requests were treated as one request.

After it became clear that your application concerned a large amount of documents, the Directorate-General for Research and Innovation engaged in a discussion with you and sent you several emails in order to avoid an excessive administrative burden, while allowing you to receive the requested documents.

In particular, the Directorate-General for Research and Innovation sent you three emails before taking the decision to unilaterally restrict the scope of your request.

The Directorate-General first sent you an email on 10 April 2019, where it informed you that you had submitted a very wide-scope request that would need to be narrowed down. The Directorate-General for Research and Innovation suggested two options, namely either to restrict the scope of your request to meetings held by the senior management of the European Commission and to documents related to the meetings published in the Transparency Register or to restrict the scope of your request to documents of the senior management and limit the number of requests to three of your choice.

You replied to this proposal on 18 April 2019 and you suggested your own restriction of the scope, but the scope of your request remained too broad to be handled within the 15+15 deadline provided for in Article 8 of Regulation (EC) No 1049/2001.

³ Judgment of the General Court of 10 December 2010, *Ryanair v Commission*, T-494/08, EU:T:2010:511, paragraph 34.

Therefore, the Directorate-General for Research and Innovation contacted you a second time in order to further restrict the scope of your request.

By email of 25 April 2019, you proposed that your request should be treated in batches, meaning essentially that part of it would be treated within the prescribed deadline and the remaining part after this deadline.

The Directorate-General for Research and Innovation sent you a third email on 2 May 2019 where it informed you that the practice of sending documents in batches is not used by the European Commission.

During its correspondence with you, the Directorate-General for Research and Innovation also informed you of the different steps that the handling of your request would require. These steps include, among others, the search for documents related to the criteria as per your request, consultation with the operational units within the Directorate responsible for the requested documents, retrieval and establishment of a complete list of the documents falling under the scope of your requests, scanning of the documents which are not in pdf format, the preliminary assessment of the content of the documents in light of any potential exceptions under Article 4 of Regulation (EC) No 1049/2001, the consultation of third parties, authors of documents concerned, the final assessment of the documents in light of the results of the consultations of different services and/or third parties, the redactions of the relevant parts falling under exceptions of Regulation (EC) No 1049/2001, the preparation of the draft reply and internal review of it, formal approval of the draft decision, final checks of the documents to be partially released (scanning of the redacted versions, with particular attention to personal data) and dispatch of the reply.

In your last email of 6 May 2019, you raised different concerns regarding the handling of wide-scoped requested.

The Directorate-General for Research and Innovation replied to some of these concerns in the initial decision. Nonetheless, given the number of documents, which still remained to be assessed and the limited time limit before extension of the deadline that had left, the Directorate-General for Research and Innovation considered that it would not be possible, to carry out the assessment required under Regulation (EC) No 1049/2001, within the time limits provided for in that regulation.

Consequently, the Directorate-General for Research and Innovation unilaterally restricted the scope of your initial application to documents from or to BIC (Bio-based Industries Consortium), including briefings, reports, correspondence (email or other), including all attachments to the said correspondence, a list of all meetings, as well as agendas and minutes or any other reports of such meetings.

Furthermore, the Directorate-General for Research and Innovation limited the time period of the request between 1 May 2016 and 22 March 2019 (the date of the initial request), and, in order provide you with as many documents as possible, to documents

which can be disclosed without consultation of third parties, with the redaction of the mere personal data.

Therefore, the Directorate-General for Research and Innovation, identified and disclosed, with the exception of personal data, in total 16 documents.

In your confirmatory application, you contest the way the unilateral restriction of the scope of the request was done at initial stage. Consequently, the scope of the confirmatory decision will be limited exclusively to this aspect.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

As part of this review, the European Commission has carried out a renewed, thorough search for possible documents falling under the scope of your request.

Following this review, I regret to inform you that I have to confirm the position of the Directorate-General for Research and Innovation, insofar as the unilateral restriction of the scope of your initial application is concerned.

2.1. Unilateral restriction of the scope of the initial application

In your confirmatory application, you contest the position of the Directorate-General for Research and Innovation as regard the unilateral restriction of the scope of your (initial) application.

As a preliminary remark, I note that the Court of Justice recognised in its judgment in *Guido Strack v Commission*⁴ that in case of wide-scope requests (requests that involve a very long document or to a very large number of documents) ‘institutions may, in particular cases in which the volume of documents for which access is applied or in which the number of passages to be censured would involve an inappropriate administrative burden, balance the interest of the applicant for access against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration’. This practice was also recognised by the Court in its judgment in *EnBW Energie Baden-Württemberg v Commission*.⁵

You argue, in your email of 6 May 2019, that you had agreed to further limit the scope of your request to documents relating to contact between the Directorate-General for Research and Innovation and six of the original lobby actors, namely Bio-based Industries Consortium, Bio-Based industries Joint Undertaking, Europabio, BASF, Bayer and European Bioeconomy Alliance.

⁴ Judgment of the Court of Justice of 2 October 2014, *Guido Strack v Commission*, C-127/13 (hereafter ‘*Guido Strack v Commission*’), EU:C:2014:2250, paragraphs 26-28.

⁵ Judgment of the General Court of 22 May 2012, *EnBW Energie Baden-Württemberg v Commission*, T-344/08 P, EU:T:2012:242, paragraph 105.

In this context, I note that the original scope of the 15 requests initially submitted by you covered many different entities. The mere search, preparation and categorisation of a list containing all the documents concerned, would already have entailed an important administrative burden for the European Commission's services in charge.

Furthermore, it immediately became clear that it would not have been possible to handle such a request within the legal deadline of 30 working days.

These estimates also take into account the fact that the staff concerned in the Directorate-General for Research and Innovation would have to deal with other tasks and applications in parallel with the handling of your initial application. The Directorate-General for Research and Innovation already explained to you, in a detailed manner, the different steps that the handling of your request would require. In addition to this, I note that the final checking of the released documents could be particularly burdensome, in case the documents include a large amount of personal data⁶, which is often the case when many documents are concerned.

As already mentioned, the Directorate-General for Research and Innovation engaged in a dialogue with you in order to reach a fair solution, which is both respecting your citizens' rights and avoiding an excessive administrative burden.

In this context, I would like to point out that the restricted scope of your request that you suggested in your email of 6 May 2019, although limited to six entities, also concerned a considerable amount of documents, namely at least 356. Please note that this figure is a minimum, as it should be taken into account that those documents have been identified through a search in the European Commission's corporate document management system, with using as key words the names of the entities involved and not, for instance, the names of the legal representatives. Therefore, the number would have been even higher if those representatives were included in the search.

Therefore, I note that it would not have been possible for the Directorate-General for Research and Innovation to handle your application for the remaining time, even with the restriction that you suggested in your email of 6 May 2019. The further restrictions you suggested were not sufficient to adequately help services reduce the scope of your request. I would like to point out in this context that the fair solution under Article 6(3) of Regulation (EC) No 1049/2001 may concern only the number and content of the documents applied for but not the deadline for replying.⁷

Furthermore, I note that the Directorate-General for Research and Innovation informed you on several occasions that, if upon receipt of the initial reply, you would still be interested in having access to more documents, you remain free to submit a new access to

⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 28 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, L 295 of 21.11.2018, p.39.

⁷ Judgment in *Guido Strack v Commission*, cited above, paragraph 26.

documents request, the scope of which should be equally manageable within the deadline of 15+15 working days.

Indeed, after sending you the initial reply on 16 May 2019, you submitted a new initial request for access to documents regarding the remaining lobby actors, which has been registered under reference number GESTDEM 2019/3075 on 27 May 2019.

Consequently, I consider that the decision of the Directorate-General for Research and Innovation to unilaterally restrict the scope of your initial application was in line with the principle of proportionality and consisted with the applicable case law of the EU Court.

3. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the Commission
Martin SELMAYR
Secretary-General