



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels,  
SANTE.DDG1.B.2/AB(2020)3519596

***By registered letter with acknowledgment  
of receipt<sup>1</sup>***

Oliver Hoedeman  
Corporate Europe Observatory  
Rue d'Edimbourg 26  
1050 Brussels  
Belgium

***Advance copy by email:***  
[ask+request-7896-72acacf2@asktheeu.org](mailto:ask+request-7896-72acacf2@asktheeu.org)

Dear Mr Hoedeman,

**Subject: Your application for access to documents – Ref GestDem 2020/2377**

We refer to your email dated 24 April 2020 in which you make a request for access to documents, registered on the same date under the above-mentioned reference number.

We also refer to our letter of 20 May 2020 extending the time limit to respond to your request according to Article 7(3) of Regulation (EC) No 1049/2001.

**1. Scope of your request**

In your request, you ask, on the basis of Regulation (EC) No 1049/2001<sup>2</sup>, access to:

“In response to my application for access to documents Ref GestDem No 2019/7290, we discussed a fair solution in accordance with Article 6(3) of Regulation (EC) No 1049/2001 and agreed to narrow down the scope to the following:

-identification of the documents falling under your request; -retrieval and establishment of a complete list of the documents identified.

This approach would allow me to submit follow-up requests for specific documents.

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<sup>1</sup> According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.

<sup>2</sup> Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

In February this year, you sent me (SANTE.DDG1.B.2/SLO/kms(2020)1089593) a list detailing the titles of the 178 identified documents, their date and the names of organisations, which sent or received the documents.”

## **2. Identification and assessment of the relevant document**

We have identified 79 documents that fall within the scope of your request.

Having examined these documents under the provisions of Article 4 of Regulation (EC) No 1049/2001, we have come to the following conclusion:

- documents No 05 c and 124 a in Annex A can be fully disclosed;
- 62 documents can be partially disclosed (documents No 01, 01 b, 02, 02 b, 05, 05 b, 06, 07, 08, 09, 19, 25 a, 25 b, 29, 30, 30, 31, 35, 41 a, 41 b, 45, 50 a, 50 b, 51, 52 a, 52 b, 52 c, 53 a, 53 b, 55 a, 55 b, 56, 60, 63, 69, 73 a, 73 b, 76, 81, 87, 94, 95, 97, 99, 112, 115, 117, 118 a, 118 b, 119 a, 119 b, 124 b, 124 c, 124 d, 124 e, 125, 152 a, 152 b, 154 a, 154 b, 172 in Annex A);
- access to 16 documents must be refused (documents No 13, 15, 17, 18, 42, 44, 54, 68, 98, 102, 129, 130, 158, 169, 171, 178 in Annex A).

You will find attached a table listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001. Please note that the numbering of the table is not consecutive, documents are numbered as they were in request ref. GESTDEM 2020/7290, in order to facilitate their identification.

The documents you request contain information related to several third parties. Therefore, the third parties have been consulted in accordance with Regulation (EC) No 1049/2001, in order to assess whether an exception to the right of access to documents is applicable.

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, and having considered the opinion of the third party, we have concluded that the documents may be partially disclosed. Some parts of the documents have been blanked out as their disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and 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.

### **3. Reason for partial disclosure**

#### *Protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001*

With regard to the documents listed above, their full disclosure is prevented by the exception concerning the protection of privacy and the integrity of the individual as laid down in Article 4(1)(b) of the Regulation, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;
- handwritten signatures/abbreviated signatures of natural persons;
- other information relating to an identified or identifiable natural person such as office/phone numbers or email addresses.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, 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 interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

### **4. Reasons for refusal**

#### *Protection of the commercial interests of a legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001*

Documents No 13, 15, 17, 18, 42, 44, 54, 68, 98, 102, 129, 130, 158, 169, 171, 178 in Annex A contain commercially sensitive business information of some of the third parties, as well of its business partners, such as the names of companies as well as other information of highly sensitive nature and related to contractual matters. Disclosure of these parts would undermine the protection of the companies' commercial interests.

We have considered whether partial access could be granted to these documents, in accordance with Article 4(6) of the Regulation. However, it follows from the assessment made above that these 16 documents are entirely covered by the exception laid down in Article 4(2), first indent, as the remaining parts after expunging the confidential information are meaningless and illegible.

### **5. Overriding public interest**

The exceptions to the right of access provided for in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested document. 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.

## **6. Means of redress**

In case you would disagree with this assessment, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Brussels  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely

Anne BUCHER