



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,
SANTE.F2 PC/jh

***By registered letter with
acknowledgment of receipt ¹***

**Mr Kunal Solanky
42 Wykeham Crescent
OX4 3SB**

Advance copy by email to:

**[ask+request-5850-
1b3ec5c1@asktheeu.org](mailto:ask+request-5850-1b3ec5c1@asktheeu.org)**

Dear Mr Solanky,

Subject: Your application for access to documents – Ref GestDem No 2020/5853

We refer to your e-mail dated 1 October 2020, registered on 5 October 2020 under the above mentioned reference number, in which you request access to documents.

We also refer to our letter of 26 October 2020 (Ref. Ares (2020)5914922) 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 email, you request, on the basis of Regulation (EC) No 1049/2001 ², access to:

“the most recent report from each Member State” on the “depopulation operations carried out during the previous year” (hereafter “depopulation report”) and submitted to the Commission according to Article 18(4) of Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing ³.

¹ Although the reply is usually also sent to you by registered post, please note 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 normal practice until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.

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

³ Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (OJ L 303, 18.11.2009, p. 1–30)

We consider that your request is to cover documents held up to the date of your initial application, i.e. 1 October 2020.

2) Identification and assessment of the concerned documents

We have identified 19 documents falling under the scope of your request. A table with the list of the identified documents and summarising the outcome of the assessment carried out on their content on the basis of Regulation (EC) No 1049/2001 is attached.

Since these 19 documents originate from a third party, the originators have been consulted in order to assess whether an exception applies to these documents, in accordance with Article 4(4) of Regulation (EC) No 1049/2001.

Having examined all the documents under the provisions of Regulation (EC) No 1049/2001 and considered the opinion of the third party, we have come to the following conclusion, which is further explained below:

- Partial access can be granted to the 19 documents as their full disclosure is prevented by one/several exception/s to the right of access laid down in Article 4 of the Regulation.

You may reuse the documents requested free of charge 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.

Documents originating from third parties cannot be re-used without the agreement of the originators, who hold a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

We enclose a copy of the documents No 1 to 19 which have been redacted of the parts which cannot be disclosed as further explained below.

3) Partial disclosure of documents

- a) 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*

With regard to the documents 1 to 19, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data: the names/initials and contact details of natural persons.

When access is requested to documents containing personal data, Regulation (EU) 2018/1725 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 agencies and on the free movement of such data⁴ becomes fully applicable⁵. Article 9(1)(b) of this 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 argument 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. In addition, 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.

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 to them. The European Commission does not assume any responsibility from their reuse.

In accordance with the above mentioned, partial access is granted to documents No 1 to 19, expunged of personal data.

b) Protection of commercial interests of a natural or legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001

Documents No 2, 10, 16 and 17 also contain information whose disclosure may undermine the commercial interest of a legal person, and they may include industrial information and information covered by intellectual property.

Since these documents originate from Member States, the latter have been consulted, in accordance with Article 4(4) of Regulation (EC) No 1049/2001, in order to assess whether an exception under Article 4 of this Regulation is applicable.

Hungary and Romania have objected to the disclosure of some parts of these documents invoking the argument that putting in public domain some business sensitive information contained therein would lead directly to the identification of livestock farms and would affect their competitive position on the market. Disclosure of these parts would undermine the protection of the commercial interests of livestock farmers.

⁴ Regulation (EU) 2018/1725 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 agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

⁵ 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.

Therefore, having considered the opinion of Hungary and Romania we have come to the conclusion that the depopulation reports submitted by Hungary (document No 10) and Romania (document No 16) may only be partially disclosed.

Document No 2 (the depopulation report from the Czech Republic) and No 17 (the depopulation report from Sweden) also contain information that would lead to the identification of farms and therefore these documents can only be partially disclosed, for the reasons provided above.

The parts of these documents (Nos 2, 10, 16 and 17) that would lead directly to the identification of livestock farms have been redacted as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation (EC) No 1049/2001.

In accordance with the above, partial access is granted to the documents Nos 2, No 10, 16 and 17, expunged of identification of livestock farms.

4) No documents held

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no reports originating from nine Member States (Belgium, Bulgaria, Cyprus, France, Lithuania, Luxembourg, Malta, Poland, Slovenia) are held by the Commission, the Commission is not in a position to fulfil your request in this respect.

5) Overriding public interest

The exceptions to the right of access provided for in the first indent of 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, neither could we identify any such ground. 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.

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 submitted 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,

Sandra Gallina
Director General

Annexes: List of identified documents;
19 partially disclosed depopulation reports.