



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Acting Director-General

Brussels,  
SANTE/E1/LV/as\_sante.ddg2.e.1(2015) 3235781

*By registered letter with acknowledgment of receipt*

*Advance copy by email to:*

[ask+request-2012-f315a557@asktheeu.org](mailto:ask+request-2012-f315a557@asktheeu.org)

Dear Mr Staes,

**Subject: Your application for access to documents – Ref GestDem No 2015/2821**

We refer to your e-mail dated 21 May 2015, in which you made a request for access to documents, registered on the same day under the above mentioned reference number.

In my letter to you dated 8 July 2015, I sent you a first batch of documents falling under the scope of your request. The present letter covers the remainder. This represents in total 92 documents, including annexes to main documents. They are listed in Annex 0 to this letter.

Having examined these documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that 23 of these documents (or parts thereof falling under the scope of your request) can be fully disclosed, that 39 of them can be partially disclosed and that access to 30 of them must be refused.

You will find the 62 fully or partially disclosed documents attached to this letter, and numbered in accordance with the order given in Annex 0. The justifications for partial disclosure and refusal of disclosure are exposed in detail below and shortly recapitulated for each document in Annex 0. Please also note that, as a rule, only those parts of these documents that fall under the scope of your request are disclosed.

Mr Bart Staes  
Member of the European Parliament  
Anselmostraat 51  
B-2018 Antwerpen

## ***1. Protection of personal data***

Personal data has been blanked out in 37 documents, identified in Annex 0.

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 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<sup>1</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>2</sup>.

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, we are disclosing the documents requested expunged from this personal data.

## ***2. Protection of the Commission's decision-making process***

Documents Nos 1, 2.1, 18, 18.1, 18.2, 22, 22.1, 22.2, 27, 39, 41, 41.1, 41.2, 42, 42.1, 42.2, 43, 44.1, 44.2, 44.3, 48, 57, 57.1, 58, 59, 61, 61.1, 61.2, 62 and 67 contain preliminary discussions on possible options on the review of the legislation applicable to GMOs.

Disclosure of the documents requested would undermine the protection of the decision-making process of the Commission. Therefore the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 applies to this document.

In this respect, it has to be recalled that, while the review was adopted on 22 April 2015, the decision-making process for the Commission has only just started, considering its involvement in the ordinary legislative procedure. This involvement encompasses defending the proposal at working level at the Council (Council Working Party) and in the relevant Committees of the European Parliament. Moreover, the Commission has to formally issue an opinion in first reading and second reading on the amendments of the co-legislators (Article 294(6), (7)(c) TFEU).

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<sup>1</sup> OJ L 8 of 12.1.2001, p. 1.

<sup>2</sup> 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.

Where the Commission delivers a negative opinion on the Council's amendments, the latter has to adopt its amendments unanimously (Article 294(9) TFEU). Moreover, the Commission can alter its proposal any time during the legislative procedure, as long as the Council has not acted (Article 293(2) TFEU).

Disclosing the documents at this stage would seriously undermine the Commission's decision-making process as it would reveal views and policy options which are currently under consideration in the legislative debate. The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure, as long as the decision-making process is still ongoing.

If the decision-making process were nevertheless considered to be closed following the adoption of the Commission's proposal – quod non – I consider, in the alternative, that the refused documents and parts of documents would nevertheless be covered by the exception provided for in Article 4(3), second subparagraph, for precisely the same reasons as explained above. Indeed, disclosing those documents, reflecting opinions for internal use as part of preliminary deliberations, would seriously harm further Commission decision-making processes as regards the review of the legislation on GMO.

We have also considered whether partial access could be granted to these documents. However, it appears that they are entirely covered by the aforementioned exception, with the exception of documents Nos 39 and 58, which are partially disclosed. Besides, those parts of documents Nos 59 and 67 that are not covered by the aforementioned exception are covered by the exception concerning the protection of court proceedings and legal advice (cf below).

### ***3. Protection of international relations***

Disclosure of those parts of documents Nos 17, 21 and 70 falling within the scope of your request would undermine the protection of the public interest as regards international relations, insofar as they include opinions on strategic approaches related to international negotiations. Therefore the exception laid down in Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 applies to these parts of these documents.

We have considered whether partial access could be granted to these parts of these documents. However, it appears that they are entirely covered by the aforementioned exception.

### ***4. Protection of court proceedings and of legal advice***

Article 4(2), second indent, of Regulation (EC) No 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of court proceedings and legal advice.

Documents Nos 39, 46, 52, 58, 59 and 67 contain elements relative to the ongoing EU-US WTO dispute on GMOs (WTO DS 291). The disclosure of these elements would weaken the EU's position in this dispute, which is still not settled, as it would provide the USA with indications on the EU's position and approach.

Further indication of the sensitive character of the legal advice revealed in documents Nos 39 and 46 is the fact that both these documents have been classified as "limited".

### ***5. Overriding public interest in disclosure***

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents concerned.

While it is acknowledged that the issue of GMOs raises considerable interest in the public and in the media, this does not outweigh in our view the harm to the Commission's decision-making process and to court proceedings and legal advice that the disclosure of the documents concerned by these exceptions would cause.

### ***6. Final considerations***

Please note that some of the documents disclosed emanate from third parties. They are disclosed for information only and cannot be re-used without the agreement of the originators, who hold a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

You may reuse the Commission documents disclosed 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.

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 its 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 5/327  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

For the Director General absent,  
Martin SEYCHELL  
Deputy Director General

Ladislav Miko

Annexes:

- Annex 0: recapitulative table of the documents covered by the request as from 1 February 2015;
- Annexes Nos 1 to 72: documents disclosed.