



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

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Mr Vinzenz Zinser

by email only:

ask+request-3-4444f572@asktheeu.org

**Subject: your confirmatory application under Regulation 1049/2001
regarding public access to documents – GESTDEM 2011/5059**

Dear Mr Zinser,

I refer to your email of 28 December 2011 in which you lodge, pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter: Regulation 1049/2001), a confirmatory application for access to documents. You request a review of the position of the Directorate-General for Agriculture and Rural Development (hereafter: DG AGRI) in its letters of 19 October and 21 December 2011 in reply to your initial request of 28 September 2011 and your additional email of 19 October 2011.

I also refer to the holding reply of 24 January 2012, in which you were informed that the Commission was not in a position to provide you with the final reply within the time limits set out in Article 8 of Regulation 1049/2001. I would like to apologise for the delay in answering your request and for any inconvenience this may have caused.

1. SCOPE OF THE REQUEST

In your initial application of 28 September 2011, you requested access to documents containing the following elements:

(1) *"All the individual payments for farm subsidies by amount".*

In this context, you suggested that for private recipients, receiver name and address should be substituted by a unique ID that would not change during the years. On the other hand, you requested details such as country, state, county, size of fields or other amounts (volumes, number of animals) subsidized for all amounts paid.

(2) *"For every individual payment, how many fulltime employed owners (people) and how many fulltime people work as employees (who pay social insurance) and if*

¹ OJ L145, 31.05.2001, p.43.

there are people employed on the premises (mainly farms) who don't pay social insurance".

(3) *"All the recipients addresses (even the private ones) by full name and address (the private ones without paid amount)".*

(4) *"All the amounts given as export subsidies".*

(5) *"The exact percentage of the producer support estimate on the gross farm receipts (percentage of subsidies) based on the produced values".*

(6) *"If there is more detailed information I would like to get this, too".*

Hereafter, I will refer to these parts of your initial application as "your request (1)" to "your request (6)".

By letter of 19 October 2011, DG AGRI informed you that following the judgment of the Court of Justice in the *Schecke* case², publication of data on subsidies regarding private recipients has been halted, but that data concerning legal persons is still published by Member States, and has directed you to the relevant website.

Concerning the other requests, in particular your request mentioned under (2) above, DG AGRI stated that the Commission was not in the possession of such information.

In your reply of 19 October 2011 to the aforementioned letter by DG AGRI, you insisted on your initial request and in particular, on your suggestion how to anonymise personal data of private recipients, which, you considered, would conform to the *Schecke* judgment. You also recalled your other requests, which, in your view, had not been dealt with.

In an additional reply of 21 December 2011, DG AGRI added, with regard to your request (4) above, that the amounts of export subsidies were available for legal persons only and directed you to the appropriate website. Additionally, DG AGRI provided you with an extract from the annual report on the European Agricultural Guarantee Fund (EAGF), which contained amounts spent as export subsidies by year and sector. Concerning your requests (1) and (3), DG AGRI pointed out that the relevant information is provided by Member States and loaded in a database that can be accessed only by complex computerised operations. In consequence, DG AGRI did not consider it as a document in the sense of Regulation 1049/2001. Additionally, DG AGRI referred to the obligation of the Commission under Article 8 of Regulation (EC) No 885/2006 to ensure that accounting information is kept confidential and secure.

Concerning your request (5), DG AGRI directed you to a website that provides data in aggregated form for data protection reasons and allows to calculate values for different groups such as Member States, regions, types of farms and sizes.

In your confirmatory application of 28 December 2011, you reiterate your initial request.

² Judgment of 9 November 2010 in Joined Cases C-92/09 and C-93/09 *Volker und Markus Schecke GbR and Hartmut Eifert v Commission*, not yet reported.

2. EXAMINATION AND CONCLUSIONS

Having examined your application and the data available to the Commission, I have come to the following conclusions:

- Concerning your requests (1) and (4), there is no document that would correspond to your request.
- Concerning your requests (2) and (5), the Commission is not in the possession of the data you request access to.
- Concerning your request (3), the requested data cannot be disclosed.
- Your request (6) is not sufficiently precise to allow the Commission the identification of the document(s) you request.

The reasons for this decision, and in particular for refusing access to the documents concerned by your request (3), are set out below.

3. REQUEST NOT SUFFICIENTLY PRECISE

Concerning your request (6), I cannot see what documents you are requesting. I can therefore not give any follow-up to that request. If applicable, I would suggest that you enter in contact with DG AGRI to clarify what documents can be concerned by your request (6).

4. DOCUMENTS NOT IN THE POSSESSION OF THE COMMISSION

Concerning your request (2), the database that contains the individual payments you mention under your request (1), does not contain this information. However, as DG AGRI pointed out in its reply of 21 December 2011, in the framework of the Farm Accounting Data Network, information on financial and economical data, including the paid and unpaid workforce, is collected from a representative sample of currently about 80 000 farms. There is however no such data available for each payment.

Concerning your request (5), I must observe first that it is not clear what you mean by "gross farm". In any case, there is no definition of a "large farm", and the Commission is not in the possession of any percentage values as the ones you appear to request.

Therefore, I have to conclude that the Commission is not in possession of the data that would correspond to your requests (2) and (5).

5. DOCUMENT QUALITY OF THE DATA CONCERNED BY YOUR REQUEST

According to Article 3, letter a) of Regulation 1049/2001, "*document* shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility".

In its judgment in the *Dufour* case³, the General Court has clarified the document quality of data contained in databases. This judgment concerns Article 3, letter a) of Decision 2004/258/CE of the European Central Bank of 4 March 2004⁴, which is identically worded as the above cited Article 3, letter a) of Regulation 1049/2001. Its interpretation can therefore be transposed to Regulation 1049/2001. According to this judgment⁵, data out of a database can be requested under the Access to Documents rules if the retrieval can be operated using normal or routine search operations. The General Court has further specified⁶ that this is the case if the retrieval is possible using the search tools provided by that database. On the other hand, the General Court has considered that a request for access to documents cannot aim at data arranged following a pattern that is not foreseen in the database concerned.

In the present case, concerning your request (1), one has to take account of the fact that the data you request is in any event anonymised (name of recipient) after 10 years or even deleted (address of recipient)⁷. Therefore, the anonymisation in the way it is performed after 10 years can be considered a routine operation; the data created by such an operation can in principle be extracted as a document under Regulation 1049/2001.

However, it has to be noted that this operation is not identical with what you suggest in request (1) of your initial application. Namely, the routine anonymisation after 10 years anonymises and/or drops all personal data fields, but does not replace fields with a unique ID that does not change over the years. The operation you suggest would not only require individual programming of a replacement procedure that would replace all personal data with such IDs, but would also require the establishment of a reference table that would link each ID to the respective personal data item, in order to maintain a unique ID over the years. Such an operation would definitively require additional programming of procedures that are not foreseen in the present databases. It would also require the establishment of new elements in the database, namely the reference table and the fields that contain the unique ID you suggested. All these operations go way beyond a normal or routine use of the database in question. They would require not only a significant programming effort, but even considerable additional storage capacities to hold the unique IDs that you suggest and link them to the personal data. As a side note, I observe that, for the extremely large database concerned by your request, which is subject to specific protection provisions as it contains sensitive personal and commercial data and as its operation is essential for the functioning of the Common Agricultural Policy, the procedure you suggest would mean a substantial financial expense for the Commission. In this context, it has to be pointed out that the normal anonymisation that the Commission carries out after 10 years, which is a much more simple operation, takes about one week to complete for data covering a single year. The much more complex operation that you suggest would utilise the Commission's computer infrastructure for a much longer time.

³ Judgment of 26 October 2011 in Case T-436/09, *Dufour v European Central Bank*, not yet reported.

⁴ OJ L 80 of 18.3.2004, p. 42.

⁵ At paragraph 153.

⁶ At paragraph 150.

⁷ Available on-line under <http://ec.europa.eu/dpo-register/details.htm?id=25133>.

In this situation, I have to conclude that all individual payments for farm subsidies by amount, with private recipients, receiver name and address substituted by a unique ID that will not change during the years, cannot be considered a document under Regulation 1049/2001. Therefore, Regulation 1049/2001 is not applicable to your request (1).

Concerning your request (4), which concerns "*all amounts given as exports subsidies*", I note that you have not specified whether you wanted aggregated data, or data per payment or in another form. In its reply of 21 December 2011, DG AGRI has provided you with full information on all amounts spent as export subsidies by year and sector. However, in your confirmatory application, you consider that information to be an "*unclear paper*", without further specifying what kind of reply you expect. I have taken into account the possibility that you request the amounts for each payment individually, in the same form as in your request (1) for direct aids. However, in that case an identical consideration as made above for your request (1) applies, as these amounts are contained in the same database and the effort necessary for anonymisation would be equivalent. Therefore, I have to conclude that the data you request under (4) do not constitute a document. It follows that Regulation 1049/2001 is not applicable to your request (4).

6. PROTECTION OF PERSONAL DATA

Article 4(1)(b) of Regulation 1049/2001 provides: "*The institutions shall refuse access to a document where 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.*"

In your request (3), you seek to obtain access to all recipient addresses (even private ones) by full name and address, as well as the amounts of the subsidies paid to legal persons. In fact, one has to distinguish in the context of your request (3) three categories of data:

(i) firstly, the names and addresses of natural persons beneficiaries of agricultural subsidies under the Common Agricultural Policy;

(ii) secondly, the names and addresses of, as well as the amounts paid to, those legal persons beneficiaries of such subsidies whose official title identifies one or more natural persons;

(iii) and thirdly, the names and addresses of, as well as the amounts paid to, those legal persons beneficiaries of such subsidies whose official title does **not** identify any natural person

(hereafter referred to as "category i" to "category iii").

The data mentioned under category i) (the names of natural persons beneficiaries of agricultural subsidies under the Common Agricultural Policy as well as their addresses) are clearly personal data as defined in Article 2(a) of 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 data⁸ (hereafter: Regulation 45/2001). Also the names, addresses and amounts mentioned under category ii) are personal data.⁹

Furthermore, I note that the Court of Justice has confirmed that, "*where a request based on Regulation No 1049/2001 seeks to obtain access to documents including personal data, the provisions of Regulation 45/2001 become applicable in their entirety, including Articles 8 and 18 thereof*"¹⁰. Pursuant to Regulation 45/2001, personal data must be processed fairly and lawfully. Any processing must be necessary for a specific purpose and proportionate to this purpose. Furthermore, pursuant to Article 8(b) of Regulation 45/2001, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.¹¹

Concerning the data mentioned under category i), I see no reason that would justify their public disclosure in the sense of Article 5(a) of Regulation 45/2001. In particular, publication of the names and addresses does not pursue the aim of increasing transparency with respect to the use of the agricultural aid concerned, which the Court has pondered as a public interest for publication of beneficiaries' data in its *Schecke* judgment¹². At the same paragraph, the Court has considered that "*such information made available to citizens reinforces public control of the use to which that money is put and contributes to the best use of public funds*". However, this is not the case if only the names and addresses of the beneficiaries are published. Therefore, I see no public interest in such a publication. Furthermore I cannot exclude that disclosure of the personal data concerned might prejudice the data subjects' legitimate interests.

Concerning the data mentioned under category ii) I would underline that names and the amounts perceived are still being published by Member States, as DG AGRI has also pointed out. DG AGRI has also directed you to the relevant website where you can access that information. In this situation, I consider that disclosure of their names and addresses is no longer necessary to pursue the aim of increasing transparency with respect to the use of the agricultural aid concerned.

⁸ OJ L 8 of 12.1.2001, p. 1.

⁹ See paragraph 53 of the *Schecke* judgment, in which the Court of Justice has clarified that the names of legal persons are to be considered personal data, insofar as the official title of the legal person identifies one or more natural persons.

¹⁰ Judgment of 29.6.2010 in Case C-28/08 P, *Commission v Bavarian Lager*, paragraph 63.

¹¹ *Bavarian Lager* judgment, paragraph 78.

¹² At paragraph 75.

However, such disclosure would still increase the harm done to those natural persons, whose name is identified in the title of the legal persons concerned, as the availability of that nominative data in form of lists would be more prone to abuse than the accessibility in the register named above. For example, such nominative data including addresses could easily be abused for mass mailings.

In consequence, I do not see any public interest that would justify public disclosure of all names and addresses of categories i) and ii) In your initial application, you refer to the need for transparency given the large amounts of agricultural subsidies paid. However, as mentioned above, your request (3) would not lead to any more transparency on these payments. Therefore, I consider that, concerning categories i) and ii), the necessity of the transfer of the personal data in question in the meaning of Article 8(b) of Regulation 45/2001 has not been established.

In the light of the foregoing, I conclude that you did not demonstrate the necessity of having transferred the personal data of category i) and ii) and that there are reasons to assume that disclosure of these personal data might prejudice the legitimate interests of the data subjects concerned.

For these reasons, access has to be refused to all names and addresses of recipients of agricultural funds mentioned under category i) and ii), pursuant to Article 4(1)(b) of Regulation 1049/2001.

Concerning category iii), I observe that the Court has stated in its aforementioned *Schecke* judgment¹³ that "*the obligation on the competent national authorities to examine, before the data in question are published and for each legal person which is a beneficiary of EAGF or EAFRD aid, whether the name of that person identifies natural persons would impose on those authorities an unreasonable administrative burden*". This is all the more true for the Commission, which would have to handle the data of all Member States and which has no direct contact with the legal persons concerned.

In consequence, it would be an unreasonable administrative burden for the Commission to distinguish for legal persons beneficiaries of agricultural funds between category ii) and category iii). Therefore, although category iii) does not contain personal data in the sense of Article 4(1), letter b) of Regulation 1049/2001, access to these names and addresses is not possible because they cannot be separated from the ones of category ii). Accordingly, the impossibility of granting access to the names and addresses described above for categories i) and ii) also extends to category iii), which cannot be separated from category ii).

For these reasons, access has to be refused to all names and addresses of recipients of agricultural funds, pursuant to Article 4(1)(b) of Regulation 1049/2001.

¹³ At paragraph 87.

7. PARTIAL ACCESS TO THE REQUESTED DOCUMENT

I have also examined the possibility of granting partial access concerning your request (3), in accordance with Article 4(6), of Regulation 1049/2001. Namely, I have examined the possibility of granting access to the addresses of only those of the legal persons whose names do not identify any natural person.

However, it is impossible to separate these legal persons in an automated way from those of the legal persons whose names do identify one or more natural persons. Even manual intervention of Commission officials would require in many cases the consultation of the legal person concerned to exclude possible errors. Given the significant number of legal persons that obtain agricultural subsidies, this would clearly result in a huge effort, which would absorb the entirety of the Commission officials working in the respective field for a significant time. The Court of First Instance has held in its judgement *Hautala v Council*¹⁴ that in particular cases, where the volume of the passages to be removed would give rise to an unreasonable amount of administrative work, the interest in public access to those fragmentary parts has to be balanced against the burden of work so caused. In the present case, I consider that, given that disclosure of only the names and addresses of those legal persons whose name does not identify a natural person is of little interest, the prevailing interest is the one of good administration, so that this partial access cannot be provided.

8. MEANS OF REDRESS

Finally, as regards your request (3), I draw your attention to the means of redress available against this decision. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,



Catherine Day

¹⁴ Judgment of 19 July 1999 in Case T-14/98, [1999] ECR, p. II-2489.