



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,
SANTE/E4/SH/od(2018)6173794

*By registered letter with
acknowledgment of receipt*

Ms Clémentine Bonvarlet
POLLINIS
10 rue Saint Marc
75002 Paris
France

Advance copy by email:
ask+request-5959-d5067a7a@askthceu.org

Dear Ms Bonvarlet,

Subject: Your application for access to documents – Ref GestDem 2018/5423

We refer to your email dated 24 September 2018 registered on 16 October 2018 with the above-mentioned reference number, by which you request access to documents on the basis of Regulation (EC) No 1049/2001¹.

1. Scope of your request

In your request, you asked access on the basis of Regulation (EC) No 1049/2001 to:

"all correspondance (including emails), agendas, minutes of meetings and any other reports of such meetings between officials/representatives/Commissioner/cabinet member of DG SANTE and the members of the Standing Committee on Plants, Animals, Food and Feed, regarding EFSA Guidance Document on the risk assessment of plant protection products on bees (Apis mellifera, Bombus spp. and solitary bees), between July 2013 and September 2018".

In one previous request received from you on 20 March 2018 and registered as GestDem 2018/1680, you asked access on the basis of Regulation (EC) No 1049/2001 access to:

"all correspondance (including emails), agendas, minutes of meetings and any other reports of such meetings between officials/representatives/Commissioner/cabinet member of DG SANTE and the members of the Standing Committee on Plants, Animals, Food and Feed, regarding EFSA Guidance Document on the risk assessment of plant protection products on bees (Apis mellifera, Bombus spp. and solitary bees), between between July 2013 to April 2018".

¹ Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Since we noted that your request registered under GestDem No 2018/5423 refers for a part to the same documents (for the period July 2013-April 2018) that were asked in your request registered under GestDem 2018/1680, we would like to clarify that this reply concerns only the additional documents relating to the period May-September 2018.

For the part of your request covering the period July 2013-April 2018, we refer to the reply that was sent to you on 4 May 2018 with the reference number Ares(2018)2380851.

For what regards the part of your request referring to the minutes and agenda on this particular topic, we would like to inform you that the agendas and summary reports from all Standing Committees on Plants, Animals, Food and Feed are publicly available online².

2. Identification and assessment of the concerned documents

For the part of your request relating to the period May-September 2018, we have identified 16 additional documents falling within your scope of your request.

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.

Having examined these documents under Regulation (EC) No 1049/2001, we have come to the conclusion that their content is protected by the exception of Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

3. Reasons for refusal

• *Protection of the ongoing decision-making process – Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001*

The documents concerned by your request are e-mail exchanges between the Commission and Member States regarding their position on EFSA Guidance Document on the risk assessment of plant protection products on bees.

Member States have to date not taken note of the EFSA Guidance Document on the risk assessment of plant protection products on bees in the framework of the Standing Committees on Plants, Animals, Food and Feed. The decision-making process is therefore currently fully open and ongoing.

Documents 1-16 contain comments submitted by individual Member States on the EFSA Guidance Document on the risk assessment of plant protection products on bees. This information is protected as it has been gathered in the framework of the Standing Committees, where the Guidance document has been discussed on several occasions.

The Standard Rules of Procedures for the Standing Committees³, which the Commission adopted pursuant to Article 9 of Regulation (EC) No 182/2001⁴, explicitly exclude the positions of individual Member States from public access. In fact, Articles 10(2) and 13(2) of the Standard Rules of Procedure affirm, respectively, that summary records

² https://ec.europa.eu/food/plant/standing_committees/sc_phytopharmaceuticals_en

³ OJ C 206, 12.7.2011, p. 11.

⁴ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

of the meetings shall not mention the position of individual Member States in the committee's discussions and that the committee's discussions shall be confidential.

It follows that the Commission cannot grant public access under Regulation (EC) No 1049/2001⁵ to documents containing references to the individual Member States that expressed opinion in the framework of committee meetings, as this would result in the above-mentioned confidentiality requirement being deprived of its meaningful effect.

In its *Corporate Europe Observatory* judgment⁶, the General Court confirmed that minutes circulated to participants in the framework of a meeting which was not open to the public, are to be considered as “*internal documents*” within the meaning of Article 4(3) of Regulation (EC) No 1049/2001 and deserve protection on that basis. The same reasoning applies, *a fortiori*, to the positions of Member States expressed in the framework of Standing Committees' meetings and consequently referred to in documents such as minutes of other meetings.

In fact, the Member States and the Commission must be free to explore all possible options in preparation of a decision within Standing Committees free from external pressure. Public disclosure of the references to individual Member States would prevent Member States from frankly expressing their views in the framework of Standing Committees meetings and thus seriously undermining the possibility of the Commission to explore all possible options in preparation of a decision and impairing the quality of the decision-making process.

Therefore, the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 applies to these documents.

We have considered whether partial access can be granted to the documents, but the exception laid down in Article 4(3), first paragraph, of Regulation (EC) No 1049/2001 applies to the documents in their entirety.

4. Overriding public interest

The exception to the right of access provided for in Article 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested documents. 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. The public interest in this case is rather to protect the Commission's decision-making process.

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.

⁵ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.05.2001, p. 43).

⁶ Judgment of the General Court of 7 June 2013 in case T-93/11, *Stichting Corporate Europe Observatory v European Commission*, paras 32-33.

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:

All correspondence should be sent to the following address:

European Commission
Secretary-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 5/282
B-1049 Brussels

or by email to: sg-acc-doc@cc.europa.eu

Yours sincerely,



Anne Bucher