EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director General

Brussels
SANTE.A.1/RMR

By registered letter
with acknowledgment of receipt[1]:
Oliver Hoedeman
Corporate Europe Observatory (CEO)
Rue d'Edimbourg 26,
1050 Brussels,
Belgium

Advance copy by email:
ask+request-8222-3bd66458@asktheeu.org

Dear Mr. Hoedeman,

Subject: Your application for access to documents – GESTDEM 2020/3667

We refer to your email dated 16 June 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 your reply to our clarification request dated 7 July 2020 and to our letter of 28 July 2020 extending the time limit to respond to your request according to Article 7(3) of Regulation (EC) No 1049/2001[2].

1. Scope of your request

In your request, you ask, on the basis of Regulation (EC) No 1049/2012, access to:

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

- *minutes and other reports of meetings between the European Commission and private healthcare companies (including Fresenius, Helios /Quironsalud, Asklepios, Ramsay Health, Sana Kliniken, Elsan, Gruppo San Donato and Capio), professional services firms*

[1] 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 to 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.

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

(including PWC, Deloitte, KPMG, EY and McKinsey) as well as with lobby groups and thinktanks (including the European alliance for cost efficiency in healthcare (COSTEFF), Health Consumer Powerhouse, etc.), where medical care and healthcare issues (including health sector reform, patients choice, cross-border healthcare, or healthcare service markets) were discussed (from June 1st 2017 till today).

- all correspondence (including emails) between the European Commission and private healthcare companies (including Fresenius Helios /Quironsalud, Asklepios, Ramsay Health, Sana Kliniken, Elsan, Gruppo San Donato and Capio), professional services firms (including PWC, Deloitte, KPMG, EY and McKinsey) as well as with lobby groups and thinktanks (including the European alliance for cost efficiency in healthcare (COSTEFF), Health Consumer Powerhouse, etc.), where medical care and healthcare issues (including health sector reform, patients choice, cross-border healthcare, or healthcare service markets) were discussed (from June 1st 2017 till today).

Based on our clarification request, you specified the following:

1) "Could you please specify more which lobby groups and which think tanks you have in mind (beyond COSTEFF and Health Consumer Powerhouse)? " Instead of providing a list of lobby groups and thinktanks that may or may not have met with DG Sante opfficials, would it be an option for you to produce a list of meetings with stakeholders that took place on the issues covered by the request for documents?

2) " Could you also please specify what kind of meetings and correspondence you are interested in (we assume that you mean lobbying meetings, such as conferences, bilateral meetings, and related correspondence)?" This assumption is 100% correct.

Please note that we consider your request to cover documents held up to the date of your initial application, i.e. 7 July 2020. Please note that this reply relates only to the documents held by the Directorate-General for Health and Food Safety and its relevant Commissioner.

Please also note that we understand your request as referring to mean private healthcare service providers, not companies that produce 'products' such as devices and pharmaceuticals'.

2. Identification and assessment of documents

We have identified 57 documents falling under 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:

- 51 documents can be partially disclosed (No documents No 1 to 9, 11, 13 to 32, 34, 35, 37 to 40, 43 to 57 in Annex A);
- access to 6 documents must be refused (documents No 10, 12, 33, 36, 41 and 42 in Annex A).

Please note that with reference to document No 34, it contains parts, which have been redacted as they do not fall within the scope of the request.

You will find attached a table (Annex A) listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001.

Documents originating from third parties or containing information regarding 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.

Some of the Documents listed above are short reports of meetings between the Commission and third parties drafted for internal purposes. These documents do not reflect the position of the Commission and cannot be quoted as reflecting the Commission's position. Moreover, these reports have been drafted by the Commission services without the input or agreement of the third parties concerned and they do not necessarily reflect accurately the positions or statements of these third parties.

3. Reasons for partial disclosure

3.1 Article 4(1)(b) of Regulation (EC) No 1049/2001 –Protection of privacy and the integrity of the individual

With regard to the documents No 1 to 9, 11, 13 to 32, 34, 35, 37 to 40, 43 to 57, 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 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;

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.

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 document 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 document. Please note that the Commission does not assume liability stemming from the reuse.

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

With regard to the documents No 10, 12, 33, 36, 41 and 42, these documents originate from or contain information related to third parties.

Pursuant to Article 4(4) of Regulation (EC) No 1049/2001, we have consulted the third parties, which have objected to the disclosure of the documents on the basis of the exception in Article 4(2), first indent, of Regulation (EC) No 1049/2001 (protection of the commercial interests, including intellectual property).

With reference to document No 10 the third party opposed to the disclosure as the document contains information on the development of the business, the model and methodology, which could give a competitor an unfair advantage in the marketplace if released.

With regard to document No 12 the third party invoked the business secrecy of the data included in the document, the release of which could undermine the protection of commercial interests.

For documents No 33, 36, 41 and 42, the consulted third party highlighted that the documents contain details which allow to draw conclusions about the company's methodologies and unique approach to problem solving for its client work which is commercially sensitive, proprietary and confidential.

Having examined the above mentioned documents, in the light of the comments of the third parties, we consider that the exception of 4(2), first indent, of Regulation (EC) No 1049/2001 applies to the entirety of the above-mentioned documents.

Lastly, document No 37 contains commercial sensitive information that, if released, could harm the commercial interest of the concerned company. Therefore, we consider that the exception of 4(2), first indent, of Regulation (EC) No 1049/2001 partially applies to the above-mentioned document.

4. Overriding public interests

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.

5. Means of redress

In case you would disagree with this position, 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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Brussels, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Anne BUCHER

Enclosure: List of documents (Annex A); Annexes.