



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Consumer, Environmental and Health Technologies
Chemicals

Brussels,
Grow/D2/LP/as

Sent by e-mail only to:

ask+request-4379-d2016bc2@asktheeu.org

Subject: Proposal for a fair solution under Article 6(3) of the Regulation – Ref GestDem No 3554/2017

Dear Ms Heise,

We refer to your e-mail dated 09/06/2017 in which you make a request for access to:

"- All correspondence (including e-mails) with and from the Commissioner and/or her cabinet and/or officials and representatives of DG Grow

- A list of all meetings and minutes of these

concerning the issue of the fertiliser industry and climate policies since January 2000

- All correspondence and meetings between the Commissioner for Grow and/or representatives of the DG with actors of fertiliser producers and interest groups as well as consultancies with links to the fertiliser industry (such as Fertilizer Europe, European Fertilizers Import Association, European Sustainable Phosphorus Platform, European Crop Care Association, Nutrient Platform, YARA S.A, Association for a better European Access to Nutrients, Asociación Nacional de Fabricantes de Fertilizantes (ANFFE), Association des Producteurs Européens de Potasse (APEP), Hellenic Fertilizer Association, CEN Technical Committee 260, European Consortium of the Organic-based Fertilizer Industry (ECOFI), European Organic Fertilizers Manufacturers Association (EUROFEMA), Alliance Européenne des Engrais Phosphatés (AEEP), European Biostimulants Industry Council (EBIC), Agricultural Industries Confederation (AIC), Mosaic, The Fertiliser Institute, International Fertiliser Industry Association, International Plant Nutrition Institute, the international federation of industrial energy consumers, European Chemical Industry Council (CEFIC), Agricultural Industries Confederation (AIC), Industrieverband Agrar, Prospero & Partners, ecofys, copenhagen economics, Achema Potashop, CF Industries, Uralkali, ICL, Agrium, K+S, SQM, APC, Total, Industrieverband Agrar, Grupa Azoty)

- on the topic of Greenhouse Emission trading (for the time frame January 2000 till June 2015)

and/or

- the issue of the fertiliser industry and natural gas import and production and/or unconventional gas exploitation (from January 2000 till June 2015)

and/or

- the issue of the 2030 Eu climate and energy framework (from January 2013 till now (June 2017))".

This request was registered on 13/06/2017 under the above-mentioned reference number.

Your application concerns a very long timeframe and a very large number of documents, which need to be assessed individually. Such a detailed analysis cannot be carried out within the normal time limits set out in Article 7 of Regulation 1049/2001.

The handling of your request involves the assessment of a large number of and voluminous documents originating from third parties. The analysis of these documents, together with the need to consult the third parties concerned in accordance with Article 4(4) of Regulation 1049/2001, cannot be expected to be completed within the normal time limits set out in Article 7 of Regulation 1049/2001.

However, article 6(3) of Regulation 1049/2001 provides that in the event of an application relating to a very long document or to very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

In accordance with the case law of the EU Courts, such a solution can only concern the content or the number of documents applied for, not the deadline for replying.¹ This means that the scope of the request must be reduced in a way that would enable its treatment within the extended deadline of 15 + 15 working days.

Based on the above-mentioned provision, we would kindly ask you to specify the objective of your request and your specific interest in the documents requested², and whether you could narrow down the scope of your request (i.e. the subject matter(s) and/or timeframe covered), so as to reduce it to a more manageable amount of documents.

As regards the timeframe covered, please note that the amount of documents increases with the start of discussions on how to address the risk of carbon leakage in the EU ETS post-2012. The European Council in March 2008 recognized the risk of carbon leakage as a concern in certain energy-intensive sectors particularly exposed to international competition that needed to be analysed and addressed in the revised ETS Directive.

In order to help you to narrow down your request, please note that after a first examination the following nature of documents have been identified by the leading unit as falling under the scope of your request: letters, meeting minutes, position papers, studies, data submissions, reports, email exchanges, presentations. These documents amount to approximately 800 pages (rough estimation).

According to our first estimates, the handling of your request would take 61 working days³, broken down as follows:

¹ Judgment of the Court of Justice of 2 October 2014 in case C-127/13, *Guido Strack v Commission*, paragraphs 26-28.

² *Ibid*, paragraph 28; Judgment of the General Court (then 'Court of First Instance') of 22 May 2012 in case T-344/08, *EnBW Energie Baden-Württemberg v Commission*, paragraph 105.

³ Taking into account other applications for access to documents and other "business as usual" tasks that the staff concerned has to deal with during the same period.

- identification of the documents falling under your request (including coordination between the different units involved in DG GROW): 20 working days;
- retrieval and establishment of a complete list of the documents identified: 5 working days;
- assessment of the content of the documents in light of the exceptions of Article 4 of Regulation 1049/2001 and drafting of the third party consultation documents: 7 working days;
- third-party/Member State consultations under Article 4(4) of Regulation 1049/2001: 5 working days;
- final assessment of the documents in light of the comments received: 3 working days;
- drafting of the reply: 3 working days;
- redaction of those parts of the documents to which one or several exceptions apply(ies): 7 working days;
- internal approval of the draft decision on your request: 11 working days.

It follows that a maximum of 100 documents could possibly be dealt with within the extended deadline of 30 working days counting from the date of registration of your application on 13/06/2017.

An estimated additional 31 working days would be needed to deal with the remainder of your application.

In order to enable us to respect the time-limits of Regulation 1049/2001, we would ask you for a swift reply to our invitation to propose a fair solution, within five working days at the latest:

- by email to: GROW-D2@ec.europa.eu;
- by postal mail to: European Commission, DG GROW/D2, BREY 11/256, Brussels.

If you have any questions concerning the invitation, you can contact us:

- by email at: GROW-D2@ec.europa.eu;
- by telephone at: (+32) (0) 22 959906.

In the absence of a reply within five working days, we will unilaterally restrict the scope of your application to those parts that can be dealt with within the extended deadline of 30 working days, counting from the registration of your application on 13/06/2017.

Thank you in advance for your understanding.

Yours sincerely,

[e-signed]
Luisa Prista
Head of Unit