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

Director-General

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By registered letter with acknowledgment of receipt

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Dear Madam,

Subject: Your application for access to documents – Ref GestDem No 2017/3554 / Tranche 1

We refer to your e-mail dated 09/06/2017 in which you make a request for access to documents, registered on 13/06/2017 under the above mentioned reference number and to the subsequent correspondence between you and Unit GROW/D2 (our proposal for a fair solution dated 27/06/2017; your reply dated 28/06/2016; our reply dated 07/07/2017; your reply dated 12/07/2017).

After our correspondence we now understand that the scope of your request is:

"- All correspondence (including e-mails) and/or meetings and minutes of these, with and from the Commissioner and/or her cabinet and/or officials and representatives of DG GROW, concerning the issue of the fertiliser industry and climate policies;

- All correspondence and meetings between the Commissioner for Grow and/or representatives of DG Grow in relation to the Fertilisers Industry (e.g. meetings and correspondence with representatives of the fertiliser industry, meetings specifically on the issue of fertiliser and the EU ETS etc.), with the listed stakeholders (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)), concerning:

1) the topic of Greenhouse Gas Emissions trading [*from January 2008 to June 2015*];

and/or

2) 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

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

As mutually agreed, due to the large amount of documents falling within the scope of this request, we will divide the disclosure into three tranches (with the respective deadlines of 26 July 2017, 15 September 2017 and 30 September 2017).

Regarding the first tranche, your application concerns the documents listed in the attached document register. Seventeen documents can be disclosed partially. Access to other three documents must be refused.

1) Personal data protection according to Article 4 par. 1 (b) of Regulation 1049/2001

Some documents to which you have requested access contain personal data.

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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable².

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.

¹ Official Journal L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or 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.

If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make 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 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.

2) Partial disclosure of some documents due to the exceptions to the right of access pursuant to Article 4 of Regulation 1049/2001

Moreover, we have come to the conclusion that documents no. 13 and 14 may only be partially disclosed. Certain parts of the concerned documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The redacted parts of the documents

- concern confidential business information; and/or
- opinions for internal use in a preliminary phase of discussions.

Disclosure of these parts would undermine the protection of

- commercial interests of a natural or legal person, including intellectual property (Art. 4 par. 2);
- the institution's decision making process (Art. 4 par. 3).

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

We have examined whether there could be an overriding public interest in disclosure but did not identify such an interest. This is also due to the fact that the blanked out parts merely regard a very small amount of documents and as well a small amount of text passages. The overall context of the concerned documents is clearly comprehensible.

3) Refusal of access of some documents due to the exceptions to the right of access pursuant to Article 4 of Regulation 1049/2001

Since some of the documents originate from third parties, the originators of the documents have been consulted.

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third parties, we regret to inform you that access to documents listed under no. 16, 17 in the annexed table cannot be granted, as disclosure is prevented by the exception to the right of access laid down in Article 4(2) first indent of this Regulation.

The documents which you seek to obtain contain commercially sensitive business information of the third party that submitted them. The authors of the documents have objected to disclose some of the documents that they sent to the Commission and have motivated their position as follows:

The disclosure of the concerned documents would undermine the protection of the commercial interests. In particular, the disclosure of the aggregated data may lead to economic interpretations that could hamper our business strategies and cause economic disadvantages. Moreover, the disclosure could have negative impacts on our future initiatives.

With regard to the Commission's own document no. 18, we consider that its disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property (Art. 4 par. 2);
- the institution's decision making process (Art. 4 par. 3).

The possibility of granting partial access in accordance with Article 4(6) of Regulation (EC) No 1049/2001 has also been examined. However, we have come to the conclusion that the documents no. 16, 17 and 18 are entirely covered by the above mentioned exceptions.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have examined whether there could be an overriding public interest in disclosure, but we have not been able to identify such an interest.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position as regards points 1), 2) and 3).

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 5/282
B-1049 Bruxelles

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

Yours sincerely,



Lowri Evans

Annex: 28 documents and list of identified documents