

EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
CLIMATE ACTION

DG.003 – Administrative and Legal support, Liaison SRD

Brussels,

Ms Nusa Urbancic

e-mail: nusa.urbancic@transportenvironment.org

**Subject: Your application under Regulation (EC) 1049/2001 for access to documents - GestDem 2012/3899 &2012/3900**

Dear Ms. Urbancic,

I refer to your email dated 14 August 2012, by which, pursuant to Regulation No.1049/2001 regarding public access to European Parliament, Council and Commission documents, you initiated a request, which was registered on 17 August 2012 under GestDem 2012/3899 & 2012/3900.

In your application you asked the Commission to provide you with the following documents:

- any correspondence (any comments, letters, minutes of meetings and emails) for the period of 17 February 2012 to 17 August 2012 exchanged between industry representatives and the Commission regarding the science of indirect land use change and/or the results of the study by the International Food Policy Research Institute (IFPRI) on indirect land use change, namely the documents submitted by COPA-COGECA, European Biodiesel Board, FEDIOL, COCEREAL, GPlus, CabinetDN, MPOC and E-pure.

Please be informed that we have identified the documents covered by your request and in annex you will find an overview of the documents as well as copies of the identified documents, where applicable.

Having carefully examined your request and the documents concerned, I am pleased to inform you that full access can be granted to documents No.1, No.2, No.3, No. 4, No. 6, No.6a, No.7a, No.9, No.9a, No.10 and No.12.

You will see that we have provided you with a partial access to documents No.5, No.7 and No.11.

Since some of the documents concerned originate from a third party, the authors of the documents have been consulted in accordance with Art.4 (4) of the Regulation (EC) No 1049/2001.

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 party, I regret to inform you that access to the documents No.8 and No. 8a cannot be granted, as the disclosure is prevented by an exception laid down in Article 4 of this Regulation.

Public disclosure of the documents which you seek to obtain would undermine the commercial interests of the company that submitted it.

**Article 4(2)** first indent of the Regulation No. 1049/2001 stipulates that:

*"The institutions shall refuse access to a document where disclosure would undermine the protection of:*

*— commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure."*

By email of 6 September 2012, the author of the document has objected to disclosure of the document that it submitted to the Commission and has motivated its position as follows:

According to the author of the document, the disclosure of the document "Determination of errors for OSR – IFPRI ILUC – Lywood 2012" would undermine the protection of the commercial interests, including intellectual property of Sofiproteol. Moreover, according to the author of the report, it has not yet been revised and argued (contre-expertise) with the larger scientific community and as such it has not been made yet public. Releasing the study now to the public would therefore undermine the protection of commercial interests of the third party.

Therefore, considering the position of the author, company G plus with regard to the documents in question, the exception laid down in Art.4(2) first indent of Regulation No. 1049/2001 applies.

The exception laid down in Art.4 (2) of the Regulation No. 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest, firstly, has to be public and secondly, has to outweigh the damage caused by the release, i.e. it must outweigh the interests protected by virtue of Article 4(2), first indent. You have not put forward arguments that would demonstrate the existence of such an overriding interest. In the absence of any such argument and given the seriousness of the risk mentioned by the third party, the Commission cannot conclude that the public interest in obtaining access to the study would outweigh the harm that public disclosure would cause to the third party.

For these reasons, the Commission is not in a position to grant you access to the documents No.8 and No.8a requested.

However, 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.

You have fifteen working days in which to do so from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

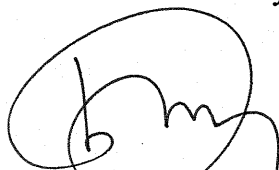
The Secretary-General will inform you of the result of this review within fifteen working days from the registration of your request, either granting you access to the documents or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to the following address:

The Secretary-General  
European Commission  
BERL 5/329  
B-1049 BRUSSELS

or by e-mail to:  
[sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Jos DELBEKE