



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels,
SANTE E3/JMC/gk (2019)8510835

*By registered letter with
acknowledgment of receipt*

Ms Nina Holland
Corporate Europe Observatory (CEO)
Rue d'Edimbourg, 26
B - 1050 Brussels

*Advance copy by e-mail to
nina.holland@corporateeurope.org*

Dear Ms Holland,

Subject: Your application for access to documents – GestDem 2019/6241

We refer to your email dated 31 October 2019 in which you make a request for access to documents under Regulation (EC) No 1049/2001 regarding public access to documents¹, registered on the same date under the above-mentioned reference number.

We also refer to our email dated 21 November 2019, in which we, in accordance with Article 7(3) of Regulation (EC) No 1049/2001, extended the time-limit to respond to your request.

1. Scope of the request

You have requested access, on the basis of Regulation (EC) No 1049/2001, to:

‘Any documents since 30 June 2019, including briefings, reports, correspondence (email or other), as well as attachments, and a list of meetings (also since 30 June 2019) with detailed minutes and any other reports of such meetings, that contain elements concerning new plant breeding techniques including related patent issues.’

You also indicate that you request such documents ‘from the European Commission (President, Commissioners, cabinets and officials)’ and that the scope of your request ‘applies to the entirety of each document’.

We consider your request to cover documents held up to the date of your application, i.e. 31 October 2019.

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

2. Identification and assessment of the documents

We have identified 49 documents (including annexes to main 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:

- 12 documents can be fully disclosed (documents No 1.1, 3.1, 7.1, 15.1, 18, 24.1, 25, 28, 29, 30, 31 and 35.1 in Annex A) of which 2 documents are already publicly available (documents No 7.1 and 18 in Annex A);
- 36 documents can be partially disclosed (documents No 1, 2, 3, 4, 5, 5.1, 5.2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14.1, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 32, 33, 34, 35, 36, 37, 38 and 39 in Annex A);
- access to 1 document must be refused (document No 11.1 in Annex A).

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. You will also find enclosed the documents which are indicated with “Yes” or “Partial” in the table.

We would also like to draw your attention to the following:

Documents No 1, 1.1, 3, 3.1, 5, 5.1, 5.2, 6, 7, 7.1, 11, 12, 14, 14.1, 15, 15.1, 24.1 and 35.1 in Annex A originate from third parties. They are disclosed for information only and cannot be re-used without the agreement of the originators, who hold a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

Please note that due to the wide scope of your request, DG SANTE has received some of the documents from other Directorates-General. Each Directorate-General is responsible for the identification and assessment of documents originating from their own services.

You may re-use the Commission documents disclosed free of charge, 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 re-use.

Documents No 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 in Annex A 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.

Finally, please also note that, where no report of a meeting listed in the briefing section of Annex A is included in the reply, you can consider this as an indication that no report of such meeting relevant to your request has been retrieved.

3. Reasons for partial refusal

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

Some of the documents to which you request access contain personal data, such as names, e-mails addresses, telephone and fax numbers and signatures. The personal data in such documents have been blanked out.

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 European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC² ('Regulation 2018/1725').

Article 3(1) of Regulation 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'.³

The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.³

In its judgment in Case C-28/08 P (*Bavarian Lager*), the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal

² Official Journal L 205 of 21.11.2018, p. 39.

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](https://eur-lex.europa.eu/eli/jud_2017/994).

data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

As to the signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, 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.

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

In documents No 16, 26, 32, 33 and 36 some passages have been redacted in order to protect the decision-making process of the Commission and Member States, in accordance with Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001. The passages in question contain the position of several Member States expressed in the framework of Council Working Party' and Standing Committee' meetings.

Member States and the Commission must be free to explore all possible options in preparation of a decision within Council and 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 such meetings and thus seriously undermining the possibility of the Commission to explore all possible options and impairing the quality of the decision-making process

In its Corporate Europe Observatory judgment⁴, 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 Council Working Party's and Standing Committees' meetings and consequently referred to in documents such as minutes of other meetings.

As regards Standing Committee's meetings, the Standard Rules of Procedures for the Standing Committees⁵, which the Commission adopted pursuant to Article 9 of Regulation (EC) No 182/2001⁶, 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 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.

⁴ Judgment of the General Court of 7 June 2013 in case T-93/11, Stichting Corporate Europe Observatory v European Commission, paras 32-33.

⁵ OJ C 206, 12.7.2011, p. 11.

⁶ 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).

It follows that the Commission cannot grant public access under Regulation (EC) No 1049/2001⁷ to documents containing references to the individual Member States that expressed opinion in the framework of such meetings, as this would result in the above-mentioned confidentiality requirement being deprived of its meaningful effect.

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

4. Reason for refusal

Article 4(2), first indent, of Regulation (EC) No 1049/2001 – Protection of commercial interests

Document No 11.1 in Annex A contains a draft report of the final workshop of the RAGES project (Risk Assessment of Genetic Engineering in the EU and Switzerland).

Pursuant to Article 4(4) of Regulation (EC) No 1049/2001, we have consulted the third party from which the document originated, which has objected to the disclosure of the document 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).

According to the third party, the draft report was sent to the Commission only for possible comments and was not meant for further distribution. Therefore, in view of the third party, any distribution of the report before publication of the final version (planned for January 2020) would undermine its commercial interests and intellectual property. In addition, according to the third party, since the final report will be published shortly, there would be no overriding interest in disclosure of the draft report.

Having examined the document No 11.1 in the light of the comments from the third party, we consider that the exception of Article 4(2) of Regulation (EC) No 1049/2001 applies to the entire document. Therefore, access to the document must be refused.

5. Overriding public interest

The exceptions to the right of access provided for in Articles 4(2) and 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.

6. 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 its 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:

⁷ 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).

European Commission
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Bruxelles

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

Yours sincerely,

Anne BUCHER

Enclosures: – Annex A: Table listing the documents covered by the request;
 – Documents fully or partially disclosed.