



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

Directorate C - New and renewable sources of energy, Energy efficiency & Innovation  
The Director

Brussels, **07 DEC. 2010**  
ENER C1/RvE/gdc D (2010) - 894661

Email: ceonina@corporateeurope.org

Dear Ms Holland,

Further to your letter of 22 October 2010 and our initial response of 12 November, I am pleased to respond to your request for access to documents related to voluntary schemes for biofuels sustainability seeking recognition by the European Commission.

The Commission considers transparency in its decision-making process to be important. In the case of voluntary schemes in particular, it is in the interest of a successful implementation of the sustainability requirements to make information available about which voluntary schemes can be used by economic operators to show compliance with the sustainability requirements laid down in Directive 2009/28/EC.

According to Regulation (EC) No 1049/2001 a request can only comprise documents held by the Institution (Art. 2(3) of the Regulation). The Commission is therefore not obliged to produce new documents which do not exist so far. As no list of meetings or minutes of meetings that Commission officials had with applicants of voluntary schemes exists, it is not possible to give access to such document.

In your request you ask for disclosure of information on the draft versions of schemes and correspondence from the Commission to the owners of voluntary schemes. In line with Article 4(4) of the aforementioned Regulation, the Commission had to consult with these third parties with a view to assessing whether the document may be disclosed.

The relevant third parties objected to disclose the schemes in this phase of the process, but were supportive of disclosure of (part of) the final draft of their schemes. It was highlighted by many of them that they would welcome an engagement with any other party to discuss the activities of the voluntary scheme.

Based on the reply of the third parties the Commission undertook its own assessment whether the disclosure of the requested was justified by the exceptions listed in Art. 4 paragraphs 2 and 3 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. In its Article 4(2) it is stated 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.*

Paragraph 3 of the same Article further clarifies that access to a document, drawn up by an institution for internal use or received by an institution, which *relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*

After a careful assessment of each document with regard to the criteria listed in Art. 4 paragraphs 2 and 3, we came to the following conclusion:

A limited set of documents regarding the recognition process of voluntary schemes may be disclosed (see attachment). This relates to the basic framework used to assess the schemes.

No information about the content of the schemes or the Commission's interaction with the owners or developers of schemes can be disclosed at this stage. A disclosure would inevitably affect commercial secrets and the internal decision making procedure of the Commission.

The voluntary schemes themselves are the result of a design process from the scheme developers which encloses specific design features that upon disclosure could harm their commercial interests. Also disclosure of specific discussions between the Commission and schemes on key parts of the schemes would be problematic in this sense.

The Commission has to do a technical review under Article 18(4) of Directive 2009/28/EC. At this point in time we are performing a technical review of draft documents of voluntary schemes. We do not consider there is an overriding public interest to make these documents public at this time.

Finally, the Commission intends to publish the final versions of voluntary schemes that seek recognition after the reviewing process is completed. Before doing so, the Commission intends to give owners of schemes the possibility to indicate what parts of the scheme cannot be disclosed for reasons of confidentiality and/or commercial sensitivity. The Commission will then assess such claims, decide whether they are justified and publish the schemes on its website. You will be informed of this in due course. By doing so the Commission ensures the maximum transparency possible in this process.

In case you want the partial refusal decision to be reviewed you should write to the Commission's Secretary-General at the address below, confirming your initial request. 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.

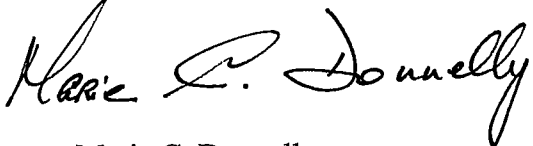
The Secretary-General will inform you of the result of this review within 15 working days from the registration of your request, either granting you access to the documents or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to the following address:

The Secretary-General  
European Commission  
B-1049 BRUSSELS

We hope this information is helpful for you.

Yours sincerely,

A handwritten signature in black ink that reads "Marie C. Donnelly". The signature is written in a cursive style with a large, looping 'M' and 'D'.

Marie C. Donnelly