

Helsinki, 29 November 2022 SD/bz

NEW DECISION ON YOUR REQUEST FOR ACCESS TO DOCUMENTS, REPLACING THE DECISION OF 31 OCTOBER 2022

Ms Stéphane Horel
Le Monde
67-69 Avenue Pierre Mendès-France,
75013 Paris, France

Sent by email only: [REDACTED]@lemonde.fr;
CC: [REDACTED]@gmail.com; [REDACTED]@protonmail.com

Subject: Partial reply to your request for access to documents – First part of batch 3**Reference: ATD/029/2022**

Dear Ms Horel,

In reference to ECHA's letter of 31 October 2022 by which ECHA decided to disclose certain documents in response to your request of 28 June 2022, registered on 29 June 2022, under the above-mentioned number, it was noted that the reasons for the partial and non-disclosure of certain documents were not fully given. Accordingly, ECHA has decided to withdraw that decision and replace it with the decision herein.

First, we would like to confirm that ECHA has identified a total of 1393 documents as falling within the scope of your request.

On 1 August 2022, ECHA sent you a reply concerning the disclosure of 401 documents pertaining to correspondence exchanged between ECHA and lobby groups on the proposed restriction of PFAS in fire-fighting foams (part (a) of your request, and the first batch of our reply).

On 30 September 2022, ECHA sent you a reply concerning the disclosure of 226 documents pertaining to the additional correspondence exchanged between ECHA and lobby groups on the proposed restriction of PFAS in fire-fighting foams and the restriction proposal for PFAS in other uses, i.e. the Universal PFAS restriction ('UPFAS') (remaining part (a) of your request, and the second batch of our reply).

This reply covers part of the third batch of documents falling within the scope of your request (i.e. part (b) and some of part (c) of your request). It covers 438 out of the 766 documents pertaining to correspondence exchanged in relation to both the restriction of PFAS in fire-fighting foams and the UPFAS restriction between:

- ECHA and the European Commission ("Commission")
- ECHA and European Union (EU) Member States and Norway

ECHA consulted the Commission, EU Member States and Norway on the disclosure of the above mentioned documents in accordance with Article 4(4) of the ATD Regulation. As regards 328 documents (out of the 766 documents), the consultation with the Member States and Norway is still pending. In the context of third party consultations, some of the consulted countries raised objections to the disclosure of a substantial number of documents. Due to the

large number, ECHA is still assessing these objections and we were unable to finalise the processing of your request within the agreed timeline. We sincerely apologise for this delay. A reply covering these remaining 328 documents will be sent to you as soon as possible with the aim to provide them by the end of November.

As regards the description of the scope of your request and the procedural history, I refer to ECHA's communication of 1 August 2022 mentioned above.

Decision

Based on Article 7(1) of the ATD Regulation¹

As regards the 438 documents referred to above, ECHA has decided:

- to grant you partial access to 322 of the requested documents
- to grant you full access to 109 of the requested documents
- to refuse access to 7 of the requested documents

You can find the disclosed documents and, where relevant, the non-confidential versions of the documents, enclosed to this letter.

Reasons

Following an individual assessment of the documents requested under the provisions of the ATD Regulation and taking into account the comments received from the consulted third parties, ECHA has concluded that the disclosure of 322 documents is partly prevented by exceptions to the right of access laid down in Article 4 of this Regulation. The reasons as to why specific redactions have been performed are provided below.

Protection of privacy and the integrity of an individual

- i. Names (and work title when identifiable), email addresses and phone numbers of individuals*

Where applicable, ECHA protects the privacy and integrity of individuals in accordance with Article 4(1)(b) of the ATD Regulation, read in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725 and therefore has decided not to disclose the names (and work title when identifiable), email addresses and phone numbers of natural persons contained in the requested documents. The related information, when located in the requested document, has therefore been redacted.

- ii. Curriculum vitae and photos of an identifiable natural person*

¹ [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.](#)

According to Article 3(1) of Regulation (EU) 2018/1725 the term 'personal data' means any information relating to an identified or identifiable natural person.

The exception referred to in Article 4(1)(b) of the ATD Regulation, read in conjunction with Article 9(1)(b) of Regulation (EU) 2018/1725, has been found to apply to the entirety a document containing different curriculum vitae and pictures:

- "WP5_1-4_WP5 meeting March 2021_File_Received_26-03-2021"

ECHA concluded that partial access could not be granted without depriving of effect the protection granted under Article 4(1)(b) of the ATD Regulation. Accordingly, the above-mentioned enclosures have been removed entirely.

Protection of defence and military matters

- Information related to the countries submitting the requested feedback and identification of system architecture of military ships in relation to discussions on the restriction of PFAS in fire fighting foams*

The slides 3 and 6 of document "MS 7_1B_MOD input_Email_Thread_08-09-2021_ATT" have been redacted in their entirety. Any information allowing the identification of the country submitting the requested feedback in the following documents has also been redacted:

- MS 9_1C_MOD input_Email_Received_04-08-2021_ATT
- MS 7_1A_MOD input_Email_Thread_08-09-2021
- MS 9_1A_MOD input_Email_Received_04-08-2021
- MS 5_1A_MOD input_Email_Thread_21-09-2021

The information contained in the PowerPoint slides would allow the identification of system architecture of military equipment and localisation of military and defence materials (e.g. weapons, ammunition, petroleum, oil and lubricants used in the army). In addition, the information relating to the country submitting the requested feedback and contained in the PDF document and emails would allow conclusions to be drawn about the operational readiness of the armed forces of the country in question. The exception provided for in Article 4(1)(a) second indent of the ATD Regulation on the protection of the public interest as regards defence and military matters was found to apply to the information at issue.

Protection of commercial interests

- References to the company's location, prices per ton of product and turnover per year*

References to prices per ton of product and turnover per year as well as the name of the company's location have been redacted in the following document:

- WP0-M_4-12_WP0 meeting April 2020_File_Received_20-04-2020

Following consultation in accordance with Article 4(4) and Article 4(5) of the ATD Regulation, some of the consulted countries opposed disclosure of this information as it would provide competitors with valuable insights regarding the concerned company's business strategy,

manufacturing capacity and revenues undermining its commercial interests. In addition, the disclosure of the company's location would allow deducing its name and has therefore also been redacted.

No overriding public interest in disclosure was found to exist. Accordingly, ECHA found that the exception provided in Article 4(2) first indent of the ATD Regulation on the protection of commercial interests applies to all the above-mentioned information.

ii. Reference to a specific project run by a company

An email containing details in relation to an ongoing project with a consultant (document "WP0-M_18-4A_WP0 meeting June 2021_Email_Thread_08-07-2021") has been redacted.

Following consultation in accordance with Article 4(4) and Article 4(5) of the ATD Regulation, some of the consulted countries opposed disclosure of this information as it would provide competitors with valuable information on ongoing measurements and studies as well as on the role of the concerned company in the project in question.

No overriding public interest in disclosure was found to exist. Accordingly, ECHA found that the exception provided in Article 4(2) first indent of the ATD Regulation on the protection of commercial interests applies to the above-mentioned email.

iii. Reference to tender offers

The evaluation of tender offers contained in slides 5 to 11 in document WP5_1-2_WP5 meeting March 2021_File_Received_26-03-2021 has been redacted.

Following consultation in accordance with Article 4(4) and Article 4(5) of the ATD Regulation, some of the consulted countries opposed disclosure of this information as it would give valuable information on the companies selected, project references and plans undermining the concerned companies' commercial interests.

No overriding public interest in disclosure was found to exist. Accordingly, ECHA found that the exception provided in Article 4(2) first indent of the ATD Regulation on the protection of commercial interests applies to all the above-mentioned slides.

iv. Reference to a confidential document related to products used in a specific sector

The reference to a document contained in the draft agenda WP0-M_14-1C_WP0 meeting February 2021_Email_Thread_16-02-2021_ATT has been redacted. Following consultation in accordance with Article 4(4) and Article 4(5) of the ATD Regulation, some of the consulted countries opposed disclosure of any information making reference to this document as the latter was claimed confidential due to its commercially sensitive content. Any reference to it may also reveal valuable information on the products, companies and/or sector concerned to competitors and it was therefore redacted.

No overriding public interest in disclosure was found to exist. Accordingly, ECHA found that the exception provided in Article 4(2) first indent of the ATD Regulation on the protection of commercial interests applies to the above-mentioned information.

Protection of the public interest as regards international relations applied solely or in combination with the protection of the decision-making process, paragraph 1

Following consultation in accordance with Article 4(4) and Article 4(5) of the ATD Regulation, some of the consulted countries opposed disclosure of certain information contained in 11 documents based on the exception provided by Article 4(1)(a) third indent of the ATD Regulation on the protection of the public interest as regards international relations solely or in combination with the exception provided by Article 4(3) paragraph 1 on the protection of the decision making process.

The references to the UPFAS restriction contained in these documents (which cover either part of the documents or the documents in their entirety) relate to information shared during internal discussions between the authorities of the involved countries. These discussions were conducted very openly between experts, and therefore, do not necessarily represent the competent authorities' final position. According to the consulted countries, the disclosure of part or of some documents in their entirety could prevent the authorities concerned from open discussions while the process is ongoing and harm trust between ECHA, Member States and third parties undermining the public interest as regards international relations.

Furthermore, as highlighted by the concerned authorities, some documents contain comments, description of steps forward following the receipt of comments from another Member State and information on responsible Member States as regards specific substance group. This information relates to deliberations and/or considerations made in the course of international cooperation on the preparation of a restriction dossier. Disclosure of this information could also harm the relationship of trust between ECHA, Member States and third parties.

Finally, due to the sensitivity of the restriction under discussion, disclosing such information may seriously hinder the future decision-making process of the Commission by increasing the risk of external pressure.

Accordingly, by reference to the objections raised by the consulted countries, ECHA found that the exception provided in Article 4(1)(a) third indent of the ATD Regulation on the protection of the public interest as regards international relations applies solely or in combination with the exception provided by Article 4(3) paragraph 1 on the protection of the decision making process to all the above-mentioned information.

On this basis, partial access is granted for 5 documents:

- WP0-M_21-2B_WP0 meeting October 2021_Email_Received_19-10-2021_ATT
- WP0-M_21-2D_WP0 meeting October 2021_Email_Received_19-10-2021_ATT
- WP0-M_21-1B_WP0 meeting October 2021_Email_Received_12-10-2021_ATT
- WP0 44_2A_Persistence data_Email_Thread_07-06-2021
- WP3 69_1A_WP3 meeting 3.9.2020_ATT__03-09-2020_ATT

For the other documents, partial access could not be granted without depriving of effect the protection granted under Article 4(1)(a) third indent of the ATD Regulation as applied solely or in combination with the protection granted under Article 4(3) paragraph 1. Accordingly, the following 6 enclosures have been removed entirely:

- 13_2C_WP0 coordination_Email_Sent_18-01-2022_ATT
- 42_1A_Soils in UPFAS_Email_Thread_23-11-2021

- 45_1B_WP0 meeting 18 May 2021_Email_Thread_10-05-2021_ATT
- 45_1C_WP0 meeting 18 May 2021_Email_Thread_10-05-2021_ATT
- 45_1D_WP0 meeting 18 May 2021_Email_Thread_10-05-2021_ATT
- 47_1B_WP0 meeting 22 Feb 2022_Email_Thread_12-03-2021_ATT

Advice and further observations

You are reminded that the documents attached are subject to copyright protection as mentioned in Article 16 of the ATD Regulation.

Means of redress

You are entitled to make a confirmatory application requesting ECHA to review this position by writing to the Executive Director of ECHA (P.O Box 400, 00121 Helsinki, Finland or executive-██████████@echa.europa.eu). This needs to be done within 15 working days, as applicable in your country, of receiving this letter.

Yours sincerely,

(e-signed)²

Simone Doyle
Head of Risk Management I Unit

Optional

- Zip file archive containing the non-confidential version of documents pertaining to point (b) and (c) of your request. Please note that this archive comprises 26 individual files. To open the archive please put all 26 files in the same folder and extract by clicking on the 001 file.³
- Corrected list of documents identified within the scope of this third batch, with an indication of type of disclosure (i.e. full access, partial access, refusal) and the exception applied under the ATD Regulation.

² As this is an electronic document, it is not physically signed. This communication has been approved according to ECHA's internal decision-approval process.

³ This zip file archive has already been provided on 31 October 2022.