

Helsinki, 30 November 2022 SD/BZ

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: Final reply to your request for access to documents – Second part of batch 3

Reference: ATD/029/2022

Dear Ms Horel,

I refer to your application of 28 June 2022, registered on 29 June 2022, under the above-mentioned reference number.

Out of 1393 identified documents, you have already received three (3) batches of documents respectively on 1 August 2022, 30 September 2022 and 31 October 2022 covering a total of 1065 documents.

As described in our letter sent on 29 November 2022¹, this reply covers the second and last part of the third batch of documents falling within the scope of your request (i.e. remaining part (c) of your request). It covers 328 documents pertaining to correspondence exchanged in relation to the Universal PFAS restriction ('UPFAS') restriction between ECHA and European Union (EU) Member States, the UK and Norway.

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 Regulation²

- **As regards correspondence exchanged between ECHA and the UK**, I regret to inform you that no documents were found that correspond to the description given in your application. According to Article 2(3) of the ATD Regulation, ECHA can only provide access to documents that are in the possession of the institution and hence we are not in a position to meet your request.

¹ This letter replaced the decision contained in the letter sent on 31 October 2022

² [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.](#)

- **As regards correspondence exchanged between ECHA and EU Member States and Norway**, ECHA has decided not to grant you access to the requested documents.

Reasons

Following an individual assessment of the remaining 328 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 their disclosure is 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 commercial interests

i. Position papers and responses to calls for evidence

Following consultation in accordance with Article 4(4) and Article 4(5) of the ATD Regulation, some of the consulted countries opposed disclosure of position papers and submissions from industry following calls for evidence.

The consulted countries highlighted that these documents were submitted under the reasonable assumption that this information would not be disclosed to third parties due to their commercially sensitive content. Indeed, these documents contain information related to the concerned companies' expertise and know-how. Disclosure could foreseeably undermine the concerned companies' commercial interests by providing the companies' competitors with valuable insights.

In addition, no overriding public interest in disclosure was found to exist in relation to the information at issue.

Partial access could not be granted without depriving of effect the protection granted under Article 4(2) first indent of the ATD Regulation. Accordingly, the following seven (7) enclosures have been removed entirely:

- WP0-M_12-3B_WP0 meeting December 2020_File_Sent_11-01-2021
- WP0 43_1B_Degradation modelling_Email_Thread_18-11-2021_ATT
- WP0 67_1B_UPFAS link_Email_Thread_29-09-2020_ATT
- WP0 67_1C_UPFAS link_Email_Thread_29-09-2020_ATT
- WP0 67_1D_UPFAS link_Email_Thread_29-09-2020_ATT
- WP0 87_1B_CropLife Europe position_Email_Thread_04-06-2021_ATT
- WP0 87_2B_CropLife Europe position_Email_Thread_04-06-2021_ATT

ii. Documents related to a specific project including selected consultants, tender offers/tender letters, project description, financing and specific analysis in relation to the concerned project

Following consultation in accordance with Article 4(4) and Article 4(5) of the ATD Regulation, some of the consulted countries opposed disclosure of three (3) documents relating to a specific project.

Indeed, disclosing these documents would give valuable information on the selected consultants, tender offers, project description, financing and specific analysis in relation to the concerned project thereby undermining the concerned companies' commercial interests.

In addition, no overriding public interest in disclosure was found to exist in relation to the information at issue.

Partial access could not be granted without depriving of effect the protection granted under Article 4(2) first indent of the ATD Regulation. Accordingly, the following three (3) enclosures have been removed entirely:

- WP5_1-1_WP5 meeting March 2021_File_Received_26-03-2021
- WP5_1-3_WP5 meeting March 2021_File_Received_26-03-2021
- WP5_1-5_WP5 meeting March 2021_File_Received_26-03-2021

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 318 documents in their entirety by application of 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 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 these documents could prevent the authorities concerned from engaging in open discussions while the process is ongoing and harm trust between ECHA, Member States and third parties thereby undermining the public interest as regards international relations.

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 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 318 above-mentioned documents have been removed entirely.

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-
[REDACTED]@echa.europa.eu). This needs to be done within 15 working days of receiving this letter.

Yours sincerely,

(e-signed)³

Simone Doyle
Head of Risk Management I Unit

Encl.:

- List of documents identified within the scope of this second part of the third batch, with an indication of type of disclosure (i.e. refusal) and the exception applied under the ATD Regulation.

³ As this is an electronic document, it is not physically signed. This communication has been approved according to ECHA's internal decision-approval process.