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C.1	Attachment to the 2 July 2010 Letter Author: Catherine Day Addressee: Nusa Urbancic Total Pages: 4	1-4 of 25	3
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C.3	Schedule of Documentation Author: Applicants Total Pages: 1	6 of 25	4
C.4	2 April 2010 Application Author: Tim Grabel and others Addressee: Bertin Martens Total Pages: 2	7-8 of 25	14, 15, 16
C.5	27 April 2010 Extension Email Author: Christine Moumal Addressee: Tim Grabel Total Pages: 1	9 of 25	15
C.6	8 June 2010 Confirmatory Application Author: Tim Grabel and others Addressee: Secretary-General Total Pages: 14	10-23 of 25	15
C.7	29 June 2010 Extension Letter Author: Marc Maes Addressee: Tim Grabel Total Pages: 1	24 of 25	15, 16
C.8	19 July 2010 Letter Author: Alvarez Cuatero Addressee: Tim Grabel Total Pages: 1	25 of 25	16

ANNEX C.1

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AGRI 1	Deliverable 2: MAP2009 Biofuel report: content_v	16/07/2009	JRC-IFTS		FA	22/02/2010
AGRI 2	AGRI 1: Deliverable 2: MAP2009 Biofuel report: content_v	16/07/2009	JRC-IFTS		FA	22/02/2010
AGRI 3	Powerpoint presentation Bussels 23/7/09 ESIM result	23/07/2009	JRC-IFTS		FA	22/02/2010
AGRI 4	Powerpoint presentation Bussels 23/7/09 CAPRI result	23/07/2009	JRC-IFTS		FA	22/02/2010
AGRI 5	Powerpoint presentation Bussels 23/7/09 AGLINK-COSIMO result	23/07/2009	JRC-IFTS		FA	22/02/2010
AGRI 6	IFITS: biofuel report_v1_defat_16JUN09 do	16/07/2009	JRC-IFTS		FA	22/02/2010
AGRI 7	IFITS: biofuel report_v2_AGLINK-part-defat	20/07/2009	JRC-IFTS		FA	22/02/2010
AGRI 8	IFITS: biofuel report_v2_defat_16JUN09 do	16/07/2009	JRC-IFTS		FA	22/02/2010
AGRI 9	IFITS: biofuel report_v2_defat_31JUN09 do	31/07/2009	JRC-IFTS		FA	22/02/2010
AGRI 10	IFITS: biofuel report_v6_defat	17/09/2009	JRC-IFTS		FA	22/02/2010
AGRI 11	IFITS: biofuel report_v6_defat	9/10/2009	JRC-IFTS		FA	22/02/2010
AGRI 12	IFITS: biofuel report_v7_defat	20/10/2009	JRC-IFTS		FA	22/02/2010
AGRI 13	IFITS: biofuel report_v6_defat	22/10/2009	JRC-IFTS		FA	22/02/2010
AGRI 14	How yield scenario on v2	23/10/2009	JRC-IFTS		FA	22/02/2010
AGRI 15	IFITS: biofuel report_v6_defat	23/10/2009	JRC-IFTS		FA	22/02/2010
AGRI 16	IFITS: biofuel report_v10_defat	30/10/2009	JRC-IFTS		FA	22/02/2010
AGRI 17	Final draft v11: biofuel report	23/12/2009	JRC-IFTS		FA	22/02/2010
AGRI 18	Additional comments on version 4 - enis	9/08/2009	AGRI	JRC-IFTS	FA	22/02/2010
AGRI 19	Additional comments on version 4 - enis	31/08/2009	AGRI	JRC-IFTS	FA	22/02/2010
AGRI 20	Questions from TRADE on presentations - enis	23/07/2009	TRADE	JRC-IFTS	FA	22/02/2010
AGRI 21	Comments on structure of report - enis	30/08/2009	AGRI	JRC-IFTS	FA	22/02/2010
AGRI 22	Comments on structure of report - enis	30/08/2009	AGRI	JRC-IFTS	FA	22/02/2010
AGRI 23	Email exchange on AGLINK model with OECD	4/06/2009	AGRI	OECD	FA	22/02/2010
AGRI 24	Email exchange on IL generation in AGLINK	17/06/2009	AGRI	JRC-IFTS	FA	22/02/2010
AGRI 25	Indie on biofuel modelling accompanying v1	23/12/2009	JRC-IFTS	AGRI	FA	22/02/2010
AGRI 26	Data transmission to JRC ISPR2	23/12/2009	JRC-IFTS	AGRI	FA	22/02/2010
AGRI 27	Exchange with TREN on fuel consumption	11/05/2009	JRC-IFTS	AGRI	FA	22/02/2010
AGRI 28	AGRI 27: data transmission to JRC ISPR2	17/04/2009	JRC-IFTS	AGRI	FA	22/02/2010
AGRI 29	AGRI 28: data transmission to JRC ISPR2	19/09/2009	JRC-IFTS	AGRI	FA	22/02/2010
AGRI 30	Proposed structure	19/09/2009	JRC-IFTS	AGRI	FA	22/02/2010
AGRI 31	Model descriptions	19/09/2009	JRC-IFTS	AGRI	FA	22/02/2010
AGRI 32	Model limitations and description of works	19/09/2009	JRC-IFTS	AGRI	FA	22/02/2010
AGRI 33	IFITS: biofuel report_v4_defat	19/09/2009	JRC-IFTS	AGRI	FA	22/02/2010
AGRI 34	IFITS: biofuel report_v4_defat	19/09/2009	JRC-IFTS	AGRI	FA	22/02/2010
TREN 1	Market Analysis ON Emissions for EU	17/12/2009	Frank Berner/DEUWARDER Eweat (TREN)		FA	22/02/2010
TREN 2	Article from WARMICK LYWOOD: JOHN PINKNEY: "Impact of protein concentrate coproducts on net land requirement for European biofuel production"	10/12/2009	Frank Berner/DEUWARDER Eweat (TREN)		FA	22/02/2010
TREN 3	Support material used during the 2nd policy workshop on "A land-use modelling framework for the European Commission" (Nev 2009)	25/11/2009	Patricia Benito European Commission services		FA	22/02/2010
TREN 4	European Forest Institute, Joensuu, Finland Paper on afforestation in Europe	20/11/2009	Nawick Lywod-TREN D1		FA	22/02/2010
TREN 5	Link to the webpage of the conference "A stakeholder debate on the science and policy impacts of sustainable biofuel production" Lausanne, Switzerland, 9-10 November 2008	19/11/2009	Rob Cox (IPECA)		FA	22/02/2010
TREN 6	Answer to a question from P. Hodson regarding Best use of land + sending of a representation from R. Matthews (forest research in UK)	18/11/2009	J. Woods (Impa P. Hodson)		FA	22/02/2010
TREN 7	IFITS report: "Mitigating the effect of biofuel production Case studies and Methodology"	16/11/2009	Aaron Berry (TREN)		FA	22/02/2010
TREN 8	Economic impact: "Methodology and Evidence Base on the Indirect Greenhouse Gas Effects of Using Wastes, Residues, and By-products for Biofuels and Bioenergy"	16/11/2009	David Knibbs (P. Hodson)		FA	22/02/2010
TREN 9	Review of the REA biofuel scenario modelling by the Imperial College + slides presentation	16/11/2009	David Knibbs (P. Hodson)		FA	22/02/2010
TREN 10	Article in Scienceexpress: "Indirect Emissions from Biofuels: How Important?"	9/11/2009	Dietrich Klein (P. Hodson)		FA	22/02/2010
TREN 11	Report from IEU - Institut für Energieund Umweltforschung Heidelberg GmbH: "Synopsis of Current Models and Methods Applicable to Indirect Land-Use Change (ILUC)"	9/11/2009	Dietrich Klein (P. Hodson)		FA	22/02/2010
TREN 12	Article Review On THE USEPA'S EISA (EPA), by Felix	22/10/2009	Michael O'Hare P. Hodson		FA	22/02/2010
TREN 13	Link to a UNEP report on biofuels	22/10/2009	Simon Worthin-TREN D1		FA	22/02/2010
TREN 14	Ecofys report on indirect impacts of biofuels	16/10/2009	Sljip Cornelissen (Ecofys)		FA	22/02/2010
TREN 15	Comments on Ozdiner paper on DDGS utilisation	9/10/2009	Nawick Lywod (P. Hodson)		FA	22/02/2010
TREN 16	Notes from Nawick Lywod on issues of concern with models for calculating GHG emissions from indirect land use change (version 1)	8/10/2009	Nawick Lywod (P. Hodson)		FA	22/02/2010
TREN 17	Paper from Jasper Hetal Kivierpris - Kenneth Baltzer - Per H. Nielsen on LCI modelling of Land Use	22/09/2009	Jasper Hetal Kivierpris		FA	22/02/2010
TREN 18	Final report on the impact of land use change on crop area changes	22/09/2009	Jasper Hetal Kivierpris		FA	22/02/2010
TREN 19	Final report on the impact of land use change on crop area changes	16/09/2009	Andre Nasar (European Commission services)		FA	22/02/2010
TREN 20	Slides on Economic modelling of the expansion of Biofuels production	16/09/2009	Andre Nasar (P. Hodson)		FA	22/02/2010
TREN 21	Palm oil study from WWF	15/09/2009	WWF		FA	22/02/2010
TREN 22	Three articles on carbon footprints of biofuels	14/09/2009	Eric Johnson (P. Hodson)		FA	22/02/2010
TREN 23	Inconceivable paper analyzing the GHG emissions associated to land use change due to sugarcane expansion in Brazil	14/09/2009	Eric Johnson (P. Hodson)		FA	22/02/2010
TREN 24	Slides on "How to link Biom and AgriLink Rescrop regarding sugar cane expansion"	13/09/2009	Andre Nasar (P. Hodson)		FA	22/02/2010
TREN 25	Slides on "How to link Biom and AgriLink Rescrop regarding sugar cane expansion"	13/09/2009	Andre Nasar (P. Hodson)		FA	22/02/2010
TREN 26	Answer to technical question from P. Hodson on reasons for soya growth	7/09/2009	Nawick Lywod (P. Hodson)		FA	22/02/2010
TREN 27	Final versions of the Ensus papers: "The relative contributions of changes in yield and land area to increasing crop output and "Impact of protein concentrate co-products on net land requirement for European biofuel product"	7/09/2009	Nawick Lywod (P. Hodson)		FA	22/02/2010
TREN 28	Question relating to the conservatism of default values	17/07/2009	P. Hodson	Aaron Berry (IFA)	FA	22/02/2010
TREN 29	Terms of reference of a study launched by REA Provision of consultancy services to develop a methodology and evidence base on practical solutions for avoiding indirect land use change in the promotion to bioenergy	16/07/2009	Aaron Berry (P. Hodson)		FA	22/02/2010
TREN 30	Comments on the Commission pre-consultation on "Indirect land use change - Possible elements of a policy approach - preparatory draft for stakeholder/peer comments"	10/07/2009	Michael O'Hare P. Hodson		FA	22/02/2010
TREN 31	Link to a scientific paper: "Accounting for time increases crop-based biofuels greenhouse gas deficit versus petroleum"	10/07/2009	James Primrose P. Hodson		FA	22/02/2010
TREN 32	Ensus approach for ILUC modelling	29/06/2009	Nawick Lywod P. Hodson		FA	22/02/2010
TREN 33	Slides from J. Woods and Andre Nasar: "Accounting for ILUC for the biofuel sector" (roundtable discussion of 28 May on the issue of indirect land-use change (ILUC) associated with biofuels)	11/06/2009	Nina Sursak (The Center)		FA	22/02/2010
TREN 34	Ensus approach for ILUC modelling	29/06/2009	Nawick Lywod P. Hodson		FA	22/02/2010
TREN 35	Ensus approach for ILUC modelling	29/06/2009	Nawick Lywod P. Hodson		FA	22/02/2010
TREN 36	Ensus approach for ILUC modelling	29/06/2009	Nawick Lywod P. Hodson		FA	22/02/2010
TREN 37	Ensus approach for ILUC modelling	29/06/2009	Nawick Lywod P. Hodson		FA	22/02/2010
TREN 38	Ensus approach for ILUC modelling	29/06/2009	Nawick Lywod P. Hodson		FA	22/02/2010
TREN 39	Ensus approach for ILUC modelling	29/06/2009	Nawick Lywod P. Hodson		FA	22/02/2010
TREN 40	Literature review-DG TREN internal work-Version 21/10/2009	21/10/2009	Jannetta Pate P. Hodson		FA	22/02/2010
TREN 41	Available figures on biofuel imports into the EU: e-mail from the mission of Canada to th EU	10/12/2009	Jannetta Pate P. Hodson		NA	
TREN 42	Answer to a technical question from P. Hodson	16/07/2009	Thomas Weber (Bundesministerium für Umwelt)		FA	27/11/2009
TREN 43	Comments on the Commission pre-consultation on "Indirect land use change - Possible elements of a policy approach - preparatory draft for stakeholder/peer comments"	26/07/2009	Phil Owen (ENH Osement and F. Raes (JRC)		FA	
TREN 44	Comments on the Commission pre-consultation on "Indirect land use change - Possible elements of a policy approach - preparatory draft for stakeholder/peer comments"	26/07/2009	Phil Owen (ENH Osement and F. Raes (JRC)		FA	
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TREN 46	Comments on the Commission pre-consultation on "Indirect land use change - Possible elements of a policy approach - preparatory draft for stakeholder/peer comments"	26/07/2009	Phil Owen (ENH Osement and F. Raes (JRC)		FA	
TREN 47	Comments on the Commission pre-consultation on "Indirect land use change - Possible elements of a policy approach - preparatory draft for stakeholder/peer comments"	26/07/2009	Phil Owen (ENH Osement and F. Raes (JRC)		FA	
TREN 48	Comments on the Commission pre-consultation on "Indirect land use change - Possible elements of a policy approach - preparatory draft for stakeholder/peer comments"	26/07/2009	Phil Owen (ENH Osement and F. Raes (JRC)		FA	
TREN 49	Comments on the Commission pre-consultation on "Indirect land use change - Possible elements of a policy approach - preparatory draft for stakeholder/peer comments"	26/07/2009	Phil Owen (ENH Osement and F. Raes (JRC)		FA	
TREN 50	Comments on the Commission pre-consultation on "Indirect land use change - Possible elements of a policy approach - preparatory draft for stakeholder/peer comments"	26/07/2009	Phil Owen (ENH Osement and F. Raes (JRC)		FA	
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TREN 82	Comments on the Commission pre-consultation on "Indirect land use change - Possible elements of a policy approach - preparatory draft for stakeholder/peer comments"	26/07/2009	Phil Owen (ENH Osement and F. Raes (JRC)		FA	
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7 a	Final draft agenda					
7 b	List of parameters/questions to be answered					
7 c	Final draft agenda					
7 d	List of participants					
ENV 5	Reports for the parallel sessions of JRC/EAD/ECED Expert Consultatio		Transmission e-mail JRC F08	I. Hodgson (ENV C3), A. de Donin	FA	
8 a	session 1					
8 b	session 2					
8 c	draft report from group 3					
ENV 10	Agenda of this JRC Workshop on "Marginal Yields and Land Allocation in LUC emissions: estimat					
ENV 10	Slides from presentation of the JRC Workshop on "Marginal Yields and Land Allocation in LUC emissions: estimat		Transmission e-mail, Marelli (JRC - F08)		FA	
10 a	Methodology and Experiences at the OECD		Transmission e-mail, Marelli (JRC - F08)		FA	
10 b	Land Use and Land Allocation in Brazilian Agriculture					
10 c	Tackling the tension between localized land in land allocation models and CGE model					
10 d	Spatial Estimations of Land Carbon Stock Changes and N2 O Emission					
10 e	Spatial Variation and Productivity Gap					
10 f	Mapping Global Agriculture: New Datasets on Agricultural Land Cover and Land U					
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10 h	Spatial allocation of extra areas resulting from ILUC model					
ENV 11	Emails relating to the administrative agreement					
11 a	e-mail 07/10/2009					
11 b	e-mail 04/06/2009 (19 04					
11 c	e-mail 04/06/2009 (17 30					
11 d	e-mail 04/10/2009					
11 e	e-mail 10/06/2009					
11 f	e-mail 21/04/2009					
11 g	e-mail 17/09/2009					
11 h	e-mail 15/05/2009					
11 i	e-mail 19/10/2009					
ENV 12	Notes of the meeting of 19/02/2009					
ENV 13	Notes of the meeting of 06/03/2009					
ENV 14	Notes of the meeting of 13/03/2009					
ENV 15	Notes of the meeting of 22/04/2009					
ENV 16	Notes of the meeting of 09/06/2009					
ENV 17	Notes of the meeting of 25/06/2009					
ENV 18	Notes of the meeting of 02/07/2009					
ENV 19	Notes of the meeting of 23/07/2009					
ENV 20	Notes of the meeting of 04/12/2009					
ENV 21	Notes of the meeting of 16/12/2009					
ENV 22	Comments DG- AGRI on draft report					
ENV 23	Comments DG- JRC on draft report					
ENV 24	Draft final report					
ENV 25	Comments DG- JRC on scenarios for ATLAS consortium report					
ENV 26	Additional table					
ENV 27	Comments DG- TREN					
ENV 28	Correspondence on draft final report among Commission services					
ENV 29	Answer from consultants to questions from Commission services					
ENV 30	Slides presented by JRC IPTS					
ENV 31	Correspondence between services on comments on draft final report					
ENV 32	Correspondence between services on comments on draft final report					
ENV 33	Correspondence between services on comments on draft final report					
ENV 34	Email on current status of model comparison initiatives					
ENV 35	Note on "Spatial allocation of agricultural land demand"					
JRC 1	Email on "Model Comparison for ILUC: EU Commission timing"					
1 a	transmission e-mail					
JRC 2	Mission report on IEA Bioenergy task 36 Workshop on "Land Use Changes due to Bioenergy: Quantifying and Managing Climate Change and Other Environmental Impacts"					
2 a	transmission e-mail					
2 b	annex					
JRC 3	Mission report on Biofuel Modelling Workshop at the EEA - Copenhagen					
3 a	transmission e-mail					
JRC 4	JRC Comments on Greenery/Econometrics paper on ILUC					
4 a	transmission e-mail					
4 b	annex					
JRC 5	JRC note on "model comparison for ILUC: overview of model comparison initiatives"					
5 a	transmission e-mail					
5 b	annex					
JRC 6	JRC annex for ILUC (marginal calculations) modeling work with DART model					
6 a	transmission e-mail					
6 b	annex 1					
6 c	annex 2					
JRC 7	Technical Annex for Iluc (marginal calculations) modeling work with G-TAP based model					
7 a	transmission e-mail					
7 b	annex 1					
7 c	annex 2					
JRC 8	Preliminary results of marginal calculations with AG-LINK model (OECD					
JRC 9	Results of Marginal calculations with DART model					
9 a	transmission e-mail					
9 b	annex 1 (Appendix DART Scenario A)					
9 c	annex 2 (Appendix DART Scenario B)					
9 d	annex 3 (Appendix DART Scenario C)					
9 e	annex 4 (DART calculation of marginal biofuel scenarios)					
JRC 10	Results of Marginal calculations with IMPACT model					
10 a	transmission e-mail					
10 b	annex					
JRC 11	TREN's note on "Next steps for the Commission modelling of land use change and biofuels"					
11 a	transmission e-mail					

LIST OF ALL CONCERNED DOCUMENTS

Doc IN	Doc IN	SUBJECT	DATE	FROM	TO	DECISION	DATE
11 b : annex							
JRC 12 Results and draft report of marginal calculations with G-TAP model			14/12/2009	Alla Goub	JRC-F09	NA	
TRADE 1 (Botuels' Global Trade and Environmental Impact Study final Report - ATLAS Consortium Specific Contract N° SI2.499.331 - implementing Framework Contract N° TRADE/07/A2			28/04/2009	Antoine Bouk		NA	
TRADE 2 (Botuels' Global Trade and Environmental Impact Study Final Report - ATLAS Consortium Specific Contract N° SI2.499.331 - implementing Framework Contract N° TRADE/07/A2			15/02/2009	Antoine Bouk		NA	
TRADE 3 (Final report - Atlas consortium - specific Contract N° SI2.499.331 - implementing Framework Contract N° TRADE/07/A2 Botuels' Global Trade and Environmental Impact Study				DG TREN		NA	
TRADE 4 (Botuels' global trade and environmental impact study" - draft final report			mars-09	DG AGRI		NA	
TRADE 5 (Report on the impact of Botuels EU Policy - draft March 2009			24/06/2009	Berth Martens	Lionel Fontagné	FA	
TRADE 6 (New study under the framework contract TRADE/07/A2 Botuels II			29/06/2009	Berth Martens		FA	
TRADE 7 (The indirect land use change impact of Botuels' final report			30/06/2009	Berth Martens		FA	
TRADE 8 (Botuels II: Global Trade and Environmental Impact Study Preliminary Draft Report			nov-09	Allass	Interference WG	NA	27/11/2009
TRADE 9 (CEPI/IFPRI botuels study Phase II: role of marginal ILC computation			16/11/2009	Berth Martens	Interference WG	NA	
TRADE 10 (Botuels study II: the report & tables			4/12/2009			NA	
TRADE 11 (Questions and Answers: Botuels Study/ IFPRI				David Laborde		NA	
TRADE 12 (Sensitivity analysis strategy: Directions to take for the Botuels II study				David Laborde		NA	
TRADE 13 (Botual Impact II Extension models				David Laborde		NA	
TRADE 14 (Botual Impact II Extension models				David Laborde		NA	
TRADE 15 (Botual Impact II Extension models				David Laborde		NA	
TRADE 16 (Baseline, Scenarios and Sensitivity Analysis						NA	

LIST OF ALL CONCERNED DOCUMENTS

ANNEX C.2

Chronology of Correspondence

- 15 October 2009:** Application requesting documents submitted to DG AGRI.
- 15 October 2009:** Application registered.
- 3 November 2009:** DG AGRI requests 15-working-day time extension.
- 27 November 2009:** DG AGRI responds with an effective refusal of the request.
- 17 December 2009:** Applicants submit confirmatory application to Secretary General.
- 18 December 2009:** Confirmatory application registered.
- 19 January 2010:** Commission requests 15-working-day time extension.
- 8 February 2010:** Commission informs Applicants of inability to meet statutory time limit.
- 8 February 2010:** Applicants respond that failure would be considered a negative reply.
- 9 February 2010:** Commission refuses the confirmatory application.
- 22 February 2010:** Commission releases 59 documents.
- 22 February 2010:** Applicants respond to partial release.
- 24 February 2010:** Commission responds with indefinite timeframe for further action.
- 8 March 2010:** Applicants' Application lodged with Registrar initiating court proceedings.
- 2 July 2010:** Commission releases 39 documents and claims exceptions for others.
- 5 July 2010:** Commission's Defence lodged with Registrar.
- 31 August 2010:** Applicants' Reply lodged with Registrar.

ANNEX C.3

Schedule of Documentation

Status	Quantity	Types of Documents	Exception Claimed	Document Reference
Full Access	114	Interim reports, final reports, emails, memoranda, internal communications, terms of reference	None	AGRI 1-34 TREN 1-40, 42 ENV 1-2, 4-5, 7-21, 30-35 JRC 1-7, 9-11 TRADE 6-8
Partial Access	2	Interim and revised reports with OECD results	Protection of international relations under Article 4(1)(a), third indent	ENV 3, 6
No Access	22	Draft reports, tables, notes, model documentation, preliminary results, comments	Protection of commercial interests under Article 4(2), first indent	ENV 22-29 TRADE 1-5, 9-16 JRC 12
No Access	2	Electronic mail from Canada and document containing OECD results	Protection of international relations under Article 4(1)(a), third indent	TREN 41 JRC 8
No Access	60	Unknown	None	None
No Access	Unknown	Emails and other documents within scope of the request	None	None

ANNEX C.4

2 April 2010

VIA ELECTRONIC MAIL

Mr. Bertin Martens
European Commission
B-1049 Brussels, Belgium
E: sg-acc-doc@ec.europa.eu
bertin.martens@ec.europa.eu

RE: Application Requesting Access to Documents Relating to the “Global Trade and Environmental Impact of the EU Biofuels Mandate” Report

Dear Mr. Martens:

On behalf of Transport & Environment, ClientEarth, European Environmental Bureau, and BirdLife International (collectively “Applicants”), we submit this application for access to documents under the Public Access Regulation¹ and the Aarhus Regulation.²

We request all documents in the possession, custody, or control of the Commission that relate to the report “Global Trade and Environmental Impact of the EU Biofuels Mandate.” Under the Public Access Regulation, “documents” means “any content whatever its medium... concerning a matter relating to the policies, activities and decisions falling within the [Commission’s] sphere of responsibility.”³ This includes, but is not limited to, external and internal communications, internal files, memorandums, sound recordings, visual recordings, surveys, workshop minutes, notes, draft reports, studies, emails, or portions thereof. Therefore, specifically, we request all documents mentioning, discussing, analyzing or describing the following:

- drafts of the above-identified report, “Global Trade and Environmental Impact of the EU Biofuels Mandate” by the International Food Policy Research Institute, which was finalised on 25 March 2010, including those documents analysing the 7% scenario and its associated impacts on land use change; and
- all communications, including emails from the Directorate-Generals and third parties, that resulted in the decision to settle on the currently estimated volume of 5.6% of road transport fuels in 2020 to meet the 10% renewable energy mandate by 2020.

This request is intended to secure all documents created after 15 October 2009 for the above-mentioned report, which is the date that Applicants submitted the previous application for similar documents. It is our view that all pre-15 October 2009 documents relating to the report were requested in our 15 October 2009 application. Nevertheless, to the extent the Commission has determined that certain pre-15 October 2009 documents—as that term is expansively defined—do not to fall within the purview of our 15 October 2009 application, such as emails from DGs and

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 (also referred to herein as the “Public Access Regulation”).

² Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (also referred to herein as the “Aarhus Regulation”).

³ Public Access Regulation, Article 3(1) and Recitals 10-11; see also Aarhus Regulation, Article 2(1)(d) and Recital 8.

industry, internal correspondence, or any other document, we request that those documents be made available too.⁴

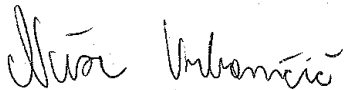
In the instance that the Commission feels that certain documents are in Applicants' possession, please contact us to discuss and we will outline the documents in our possession or provide a log of the documents received to date. Please note that this invitation to confer does not constitute any waiver of our right to a timely response within the statutorily prescribed time-limits.⁵

If the Commission is legally required to redact any of the documents identified above, please inform us of the required redactions, outline the justifications for such redaction, identify the period of time the redaction is justified, and then produce copies of the documents as redacted.⁶ If the Commission decides to withhold any responsive documents, we request a log that describes such documents and the basis for your determination that such documents fall under an exception in the Public Access Regulation.⁷ We further request that, in responding to this application, the Commission comply with all relevant time-limits set forth in the Public Access Regulation and its internal rules.⁸

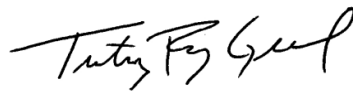
To the extent possible, we prefer the documents in electronic format. All documents should be sent to Nuša Urbančič at 26 Rue d'Edimbourg, 3rd Floor, Mundo-B, B-1050 Brussels, Belgium. Please produce the documents on a rolling basis. At no point should the Commission's search for—or deliberations concerning—certain documents delay the production of others that the Commission has already retrieved and elected to produce.

If you have any questions or concerns, do not hesitate to contact Tim Grabiell of ClientEarth at +33 (0)6 32 76 77 04 and tgrabiel@clientearth.org or, in the alternative, Nuša Urbančič of Transport & Environment at +32 (0)2 893 0846 and nusa.urbancic@transportenvironment.org. Thank you for your prompt attention to this matter.

Sincerely,



Nuša Urbančič
Transport & Environment
Policy Officer



Tim Grabiell
ClientEarth
Staff Lawyer



Ariel Brunner
BirdLife International – European Division
Head of European Union Policy



Pieter de Pous
European Environmental Bureau
Senior Policy Officer

⁴ It is our position that the 15 October 2009 application—as drafted and submitted—includes within its scope a request for all emails and other documents from the Directorate-Generals related to the above-identified report. Therefore, we make this request without any prejudice to our rights and claims in the legal proceedings before the General Court of the European Union.

⁵ Public Access Regulation, Articles 6-8.

⁶ Public Access Regulation, Article 4(6) and 4(7); see also Aarhus Regulation, Article 6.

⁷ See Public Access Regulation, Article 4(6), Article 4(7), and Article 11(1); see also Case T-2/03, *Verein für Konsumenteninformation v Commission of the European Communities* (2005), paragraph 73.

⁸ See, e.g., Public Access Regulation, Articles 6-7; Commission Decision of 5 December 2001 amending its rules of procedure (notified under document number c(2001) 3714) 2001/937/EC, ECSC, Euratom, Annex, Article 3.

ANNEX C.5

From: TRADE-ACCES-DOCUMENTS@ec.europa.eu
To: tgrabiel@clientearth.org
Subject: Request for Access to Documents - Gestdem no. 2010/1595
Date: Tuesday, April 27, 2010 3:50:00 PM

Dear Mr Grabiel,

Thank you for your email of 02/04/2010 registered on 06/04/2010 applying for a copy of documents in accordance with Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Your application is currently being dealt with. However, in view of the number of documents applied for, we have to extend the prescribed period by another of 15 working days before you receive a reply. We apologize for this delay.

Yours sincerely,

Christine Moumal
European Commission
DG Trade 0.1 - Policy Coordination

ANNEX C.6

8 June 2010

VIA ELECTRONIC MAIL

The Secretary-General
c/o Ms. Catherine Day
European Commission
B-1049 Brussels, Belgium
E-mail: sg-acc-doc@ec.europa.eu

***RE: Confirmatory Application for Reconsideration of Denial of Application
Requesting Access to Documents Containing Environmental Information***

Dear Secretary-General:

ClientEarth, Transport & Environment, European Environmental Bureau, and BirdLife International (collectively “Applicants”) submit this confirmatory application for reconsideration of the statutory denial of our application—submitted on 2 April 2010 and registered on 6 April 2010—requesting access to environmental documents. The original application requested documents on the “Global Trade and Environmental Impact of the EU Biofuels Mandate” study by the International Food Policy Research Institute and related communications. Those documents provide information necessary for meaningful public participation that, if not released, will effectively foreclose the public’s ability to engage in the decision-making process on this important issue. Through this confirmatory application for reconsideration, Applicants respectfully request that the Secretary-General reconsider the denial and grant access to the requested documents.

FACTUAL BACKGROUND

In April 2009, the European Parliament and Council approved Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (hereinafter “RED” for Renewable Energy Directive), which is designed to promote wind power, solar energy, hydropower, and energy from biomass.¹ RED requires Member States to source 20% of their energy needs from renewables by 2020. It also outlines a 10% target for renewables in transportation, which is expected to be met through the increased use of biofuels. On the same day, the European Parliament and Council approved Directive 2009/30/EC amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions (hereinafter “FQD” for Fuel Quality Directive), which includes sustainability criteria and targets a 6% reduction in lifecycle greenhouse-gas (GHG) emissions from fuels consumed in the EU by 2020.²

During the legislative process, the Community legislature recognised that these policies could be less-effective than envisioned and, at times, counter-productive, adversely impacting both forests and climate as a result of impacts from indirect land-use change (ILUC). For that reason, the Community legislature included an identical provision in RED and FQD requiring the Commission to

¹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (hereinafter “RED” for Renewable Energy Directive).

² Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (hereinafter “FQD” for Fuel Quality Directive).

report by 31 December 2010 on the impacts of ILUC and, if appropriate, make proposals to incorporate those GHG emissions into the regulatory framework of the directives:

The Commission shall, by 31 December 2010, submit a report to the European Parliament and to the Council reviewing the impact of indirect land-use change on greenhouse gas emissions and addressing ways to minimise that impact. The report shall, if appropriate, be accompanied by a proposal, based on the best available scientific evidence, containing a concrete methodology for emissions from carbon stock changes caused by indirect land-use changes, ensuring compliance with this Directive [...].

Such a proposal shall include the necessary safeguards to provide certainty for investment undertaken before that methodology is applied. With respect to installations that produced biofuels before the end of 2013, the application of the measures referred to in the first subparagraph shall not, until 31 December 2017, lead to biofuels produced by those installations being deemed to have failed to comply with the sustainability requirements of this Directive if they would otherwise have done so, provided that those biofuels achieve a greenhouse gas emission saving of at least 45 %. This shall apply to the capacities of the installations of biofuels at the end of 2012.

The European Parliament and the Council shall endeavour to decide, by 31 December 2012, on any such proposals submitted by the Commission.³

It is envisioned that this will take the form of amendments to the directives themselves or a separate legislative proposal that conforms to the statutory mandate. At the present, the Commission is drafting this report and considering the form of accompanying proposal. But a significant amount of information and communications have already been produced that must be made available to the public.

On 2 April 2010, Applicants submitted a request to DG Trade (hereinafter referred to as the “Commission”) for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council, and Commission documents. The request detailed several documents for disclosure:

- drafts of the above-identified report, “Global Trade and Environmental Impact of the EU Biofuels Mandate” by the International Food Policy Research Institute, which was finalised on 25 March 2010, including those documents analysing the 7% scenario and its associated impacts on land use change; and
- all communications, including emails from the Directorate-Generals and third parties, that resulted in the decision to settle on the currently estimated volume of 5.6% of road transport fuels in 2020 to meet the 10% renewable energy mandate by 2020.

The application was registered on 6 April 2010. Then, on 27 April 2010, the Commission responded, granting itself an additional 15 working days to comply:

³ RED, Article 19(6); FQD, Article 7d(6).

Thank you for your email of 02/04/2010 registered on 06/04/2010 applying for a copy of documents in accordance with Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Your application is currently being dealt with. However, in view of the number of documents applied for, we have to extend the prescribed period by another of 15 working days before you receive a reply. We apologize for this delay.

The proffered basis for the time extension is “the number of documents applied for.” Since then, 15 working days have expired and the Commission has not responded. With this confirmatory application for reconsideration, Applicants now request that the Secretary-General reverse this improper denial and grant access to all requested documents.

VIOLATIONS OF REGULATIONS PROVIDING PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION

In denying the request, the Commission violates two bedrock regulations providing access to environmental information. The first is 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 (hereinafter “Public Access Regulation”), which establishes the right of public access to environmental documents. It ushered in a new era of accessibility and legitimacy to Community institutions,⁴ codifying the principles of openness, transparency and democracy to promote legitimacy, accountability, and effectiveness in Community decision-making. It also reaffirmed the “right” of public access to documents.⁵

The second is Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (hereinafter “Aarhus Regulation”), which gives the public’s right to environmental information fuller effect when relating to environmental information in the possession of Community institutions.⁶ The Aarhus Regulation was adopted five years after the Public Access Regulation, reaffirming and strengthening these principles under its first pillar, “access to environmental information.”⁷ Together, these regulations grant to Applicants the right to the documents and environmental information sought.

Under Article 7(1) of the Public Access Regulation, the Commission must handle the application promptly and provide a written reply in the case of denial:

An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and

⁴ 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 (hereinafter “Public Access Regulation”), Recital 3.

⁵ Public Access Regulation, Recital 4.

⁶ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (hereinafter “Aarhus Regulation”).

⁷ Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (hereinafter “Aarhus Convention”), Article 1.

inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2 of this Article.⁸

In exceptional cases, for example in the event of an application relating to a very large number of documents, “the time-limit provided for... may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.”⁹ The requirement to give detailed reasons is intended to force the institution—here, the Commission—to articulate the basis for the extension so that the applicant can ensure no abuse or maladministration. A failure to reply within the prescribed time-limit “shall entitle the applicant to make a confirmatory application.”¹⁰

Under Article 7(4), a “failure to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.” The Commission has failed to reply to 2 April 2010 application. Therefore, this confirmatory application is proper. Without any basis upon which to challenge the lawfulness of the denial, Applicants are limited to discussing the general obligations under the law, the unlawfulness of the time extension, and the public interest in the documents. This is without prejudice to our right to bring additional claims of law and fact in legal proceedings, if necessary.

I. The Commission’s Rejection of Applicants Request Violates the Law

As the Commission is well aware, the Public Access Regulation establishes the right of public access to EU documents. It ushered in a new era of accessibility and legitimacy to Community institutions, codifying the principles of openness, transparency and democracy to promote legitimacy, accountability, and effectiveness in EU decision-making. It also reaffirmed the right of public access to documents.¹¹ The Aarhus Regulation gives fuller effect to the public’s right to environmental information when in the possession of EU institutions. The Aarhus Regulation was adopted five years after the Public Access Regulation, reaffirming and strengthening these principles under its first pillar, “access to environmental information.”¹² The right to access environmental information also serves as an essential condition precedent to give full effect to the Aarhus Regulation’s second pillar, “public participation in decision-making.”¹³

The Public Access Regulation’s two-stage administrative procedure is designed to “to ensure the widest possible access to documents,” “to establish rules ensuring the easiest possible exercise of this right,” and “to promote good administrative practice on access to documents.”¹⁴ The prescribed time-limits assist in “giv[ing] the fullest possible effect to the right of public access to documents.”¹⁵ In order to ensure the “right of access is fully respected,” the Public Access Regulation also provides the possibility of court proceedings or complaints to the Ombudsman.¹⁶ The foundation of the two-stage administrative procedure is a presumption overwhelmingly in favour of disclosure: “[i]n principle, all documents of the institutions should be accessible to the public.”¹⁷ With respect to documents containing environmental information, as here, the Aarhus Regulation essentially “guarantee[s] the right of public access to environmental information received or produced by Community institutions or bodies and held by them.”¹⁸

⁸ Public Access Regulation, Article 7(1).

⁹ Public Access Regulation, Article 7(3).

¹⁰ Public Access Regulation, Article 7(4).

¹¹ See Public Access Regulation, Recitals 1-4.

¹² Aarhus Regulation, Recital 5 and Article 1.

¹³ Aarhus Regulation, Recital 5 and Article 9.

¹⁴ Public Access Regulation, Article 1(a)-(c).

¹⁵ Public Access Regulation, Recital 4.

¹⁶ Public Access Regulation, Recital 13.

¹⁷ Public Access Regulation, Recital 11.

¹⁸ Aarhus Regulation, Article 1(1)(a).

The first stage of the two-stage administrative procedure begins when an application is “made in any written form.”¹⁹ In the instance of a request for access to Commission documents, as here, the application may be submitted to any relevant department, Directorate-General, or the Secretary-General.²⁰ The Public Access Regulation requires that the application “be handled promptly.”²¹ Within 15 working days, the institution is required to “either grant access to the document requested... or, *in a written reply*, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application.”²² The reasons stated in the written reply will serve as the basis for an applicant later seeking reconsideration.²³ Only in “exceptional cases” may the time-limit be extended.²⁴ A refusal to disclose a document or a failure to reply within the prescribed time-limit entitles the applicant to submit a confirmatory application.²⁵ This is in recognition of the time-sensitive nature of most document requests, especially those containing environmental information, and represents the balance struck by the Community legislature between administrative review and timely disclosure.

The second stage of the two-stage administrative procedure begins when a confirmatory application is submitted requesting reconsideration of the refusal. In the instance of a request for access to Commission documents, as here, the confirmatory application should be submitted to the Secretary-General.²⁶ The Public Access Regulation requires that the confirmatory application “be handled promptly.”²⁷ Within 15 working days, the institution is required to “either grant access to the document requested... or, *in a written reply*, state the reasons for the total or partial refusal.”²⁸ Only in “exceptional cases” may the time-limit be extended.²⁹ A refusal to disclose or failure to reply entitles the applicant to certain remedies, “namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman.”³⁰ The institution must state its reasons for refusal “in a written reply” *during* the two-stage administrative procedure, not after.

In *Internationaler Hilfsfonds v. Commission*, the European Court of Justice described the aims of the two-stage administrative process:

With regard to Regulation No 1049/2001, it should be pointed out that Articles 7 and 8 of that regulation, by providing for a two-stage procedure, aim to achieve, first, the swift and straightforward processing of applications for access to documents of the institutions concerned and, second, as a priority, a friendly settlement of disputes which may arise. For cases in which such a dispute cannot be resolved by the parties, the abovementioned Article 8(1) provides two remedies, namely the institution of court proceedings or the lodging of a complaint with the Ombudsman.

That procedure, in so far as it provides for the making of the confirmatory application enables in particular the institution concerned to re-examine its position before taking a definitive refusal decision which could be the subject of an action

¹⁹ Public Access Regulation, Article 6(1).

²⁰ Commission Decision 2001/937/EC, Annex, Article 2.

²¹ Public Access Regulation, Article 7(1).

²² Public Access Regulation, Article 7(1)(emphasis added).

²³ See, e.g., Public Access Regulation, Articles 7(2) and 8(1).

²⁴ Public Access Regulation, Article 7(3).

²⁵ Public Access Regulation, Article 7(2) and (4).

²⁶ Commission Decision 2001/937/EC, Annex, Article 4.

²⁷ Public Access Regulation, Article 8(1).

²⁸ Public Access Regulation, Article 8(1)(emphasis added).

²⁹ Public Access Regulation, Article 8(2).

³⁰ Public Access Regulation, Article 8(1).

before the courts of the Union. Such a procedure makes it possible to process initial applications more promptly and, consequently, more often than not to meet the applicant's expectations, while also enabling the institution to adopt a detailed position before definitively refusing access to the documents sought by the applicant, in particular where the applicant reiterates the request for disclosure of those documents notwithstanding a reasoned refusal by that institution.

The Public Access Regulation and jurisprudence identify several important public policies promoted through the two-stage administrative process, two of which are particularly relevant here.

First, it provides the basis upon which applicants may determine whether to challenge the refusal, providing them the ability to weigh the presumption in favour of disclosure against the reasons for refusal to determine whether their rights have been violated or a claim to exception is vitiated by error. In *Kingdom of Sweden v. Commission of the European Communities*, the Court found that the "information will allow the person who has asked for the document to understand the origin and grounds of the refusal of his request and the competent court to exercise, if need be, its power of review."³¹ In *WWF European Policy Programme v. Council of the European Union*, the Court found that this obligation to state the reasons for denial is "to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity to be contested."³² It also makes common sense. Stating the reasons in written form provides the applicant with the ability to secure counsel to review the legal merits of the refusal and, if necessary, initiate court proceedings or make a complaint to the Ombudsman, as circumstances may require.

Second, it creates an administrative record upon which judicial review is based. In *WWF European Policy Programme v. Council of the European Union*, the Court stated that "settled case-law provides that the purpose of the obligation on the institution to state the reasons for its decision to refuse access to a document is... to enable the Community judicature to review the lawfulness of the decision."³³ In order to ensure the most efficient use of limited judicial resources, the institution must raise the reasons for withholding the document in written form during the course of the two-stage administrative procedure, or otherwise waive its ability to raise them later. Reasons offered orally or after the two-stage administrative procedure are not within the scope of judicial review.

For these reasons, the institution must give detailed reasons for the refusal. In *Kingdom of Sweden v. Commission of the European Communities and Others*, the Court found that "as is apparent in particular from Articles 7 and 8 of the regulation, the institution is itself obliged to give reasons for a decision to refuse a request for access to a document."³⁴ In *Kingdom of Sweden and Maurizio Turco v. Council of the European Union*, the Court found that "it is incumbent on the institution concerned to give a detailed statement of reasons for such a refusal."³⁵ It goes without saying that failing to respond in writing—much less to give detailed reasons—during the first stage of the administrative hinders the development of the issues for public and judicial review since it precludes applicants, as here, from knowing the basis for any denial and responding accordingly.

³¹ Case C-64/05 P, *Kingdom of Sweden v. Commission of the European Communities* (2007), paragraph 89.

³² Case T-264/04, *WWF European Policy Programme v. Council of the European Union* (2007), paragraph 36, citing Case T-187/03, *Scippacercola v Commission* (2005), paragraph 66.

³³ Case T-264/04, *WWF European Policy Programme v. Council of the European Union* (2007), paragraph 36.

³⁴ Case C-64/05 P, *Kingdom of Sweden v. Commission of the European Communities and Others* (2007), paragraph 89.

³⁵ Joined cases C-39/05 P and C-52/05 P, *Kingdom of Sweden and Maurizio Turco v. Council of the European Union* (2008), paragraph 69.

The institution must also carry out a concrete, individual assessment of the content of the documents referred to in the request.³⁶ Courts have found that “where an institution receives a request for access under [the Public Access Regulation] it is required, in principle, to carry out a concrete, individual assessment of the content of the documents referred to in the request.”³⁷ This is made apparent in “that all exceptions mentioned in Article 4(1) to (3) are specified as being applicable to ‘a document.’”³⁸ On this point, in *Verein für Konsumenteninformation v. Commission of the European Communities*, the court rejected as insufficient an assessment of documents by reference to categories rather than on the basis of the actual information contained in those documents, “since the examination required of an institution must enable it to assess specifically whether an exception invoked actually applies to all the information contained in those documents.”³⁹ A concrete, individual assessment is also needed to ensure compliance with other provisions of the Public Access Regulation, including whether redaction is appropriate under Article 4(6) and the period of time protection is justified under Article 4(7).⁴⁰ The purpose of this assessment must be forwarded to the applicant to serve as the basis for determining the applicability of the exception with respect to the document in question.⁴¹

In order to be withheld, a document falling under the purview of the Public Access Regulation must fall under one of the exceptions provided in the regulation. The Aarhus Regulation provides a special rule of interpretation when reviewing the grounds for refusal for environmental information. It states that “the grounds for refusal... should be interpreted in a restrictive way,” particularly when the “information requested relates to emissions in the environment,” such as GHGs:

“The grounds for refusal as regards access to environmental information should be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions in the environment.”⁴²

The term “environmental information” is expansively defined, “encompass[ing] information in any form on the state of the environment.”⁴³ It includes “reports on the implementation of environmental legislation,” “the state of the elements of the environment... and the interaction among these elements,” and “measures (including administrative measures)... and activities affecting or likely to affect [the environment] as well as measures or activities designed to protect those elements.”⁴⁴

In addition to its restrictive interpretation of exceptions, the Public Access Regulation requires even wider access where, as here, the documents relate to the Commission’s delegated legislative

³⁶ Case T-2/03, *Verein für Konsumenteninformation v. Commission of the European Communities* (2005), paragraphs 69-74; see also Case T-188/98 *Kuijer v. Council of the European Union* (2000), paragraph 38; Case T-14/98, *Hautala v. Council of the European Communities* (1999), paragraph 67.

³⁷ Case T-2/03, *Verein für Konsumenteninformation v. Commission of the European Communities* (2005), paragraphs 69-74; see also Case T-188/98 *Kuijer v. Council of the European Union* (2000), paragraph 38; Case T-14/98, *Hautala v. Council of the European Communities* (1999), paragraph 67.

³⁸ See Case T-2/03, *Verein für Konsumenteninformation v. Commission of the European Communities* (2005), paragraph 70.

³⁹ Case T-2/03, *Verein für Konsumenteninformation v. Commission of the European Communities* (2005), paragraph 73, citing Case T-123/99, *JT’s Corporation v. Commission of the European Communities* (2000), paragraph 46.

⁴⁰ See Case T-2/03, *Verein für Konsumenteninformation v. Commission of the European Communities* (2005), paragraph 73; see also Public Access Regulation, Article 4(6), Article 4(7), and Article 11(1).

⁴¹ See, e.g., Case T-2/03, *Verein für Konsumenteninformation v. Commission of the European Communities* (2005), paragraphs 69-74; Case T-188/98 *Kuijer v. Council of the European Union* (2000), paragraph 38; Case T-14/98, *Hautala v. Council of the European Communities* (1999), paragraph 67.

⁴² See Aarhus Regulation, Recital 15 and Article 6(1).

⁴³ Aarhus Regulation, Recital 8.

⁴⁴ Aarhus Regulation, Article 2(1)(d)(i), (iii), and (iv).

capacity. Under Recital 6, the documents should be made accessible to the greatest possible extent in matters related to legislative activities:

“Wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under the delegated powers, while at the same time preserving the effectiveness of the institution’s decision-making process. Such documents should be made directly accessible to the greatest possible extent.”⁴⁵

This wider access has been expansively interpreted. For example, in *Kingdom of Sweden and Maurizio Turco v. Council of the European Union*, the Court rejected the Council’s argument that disclosure of legal documents advising the Council on legislative matters would undermine the Council’s decision-making.⁴⁶ Citing Recital 6, the Court found that, on the contrary, openness contributed to “strengthening democracy by allowing citizens to scrutinize all the information which has formed the basis of a legislative act,” adding further that the “possibility for citizens to find out the considerations underpinning legislative action is a precondition for the effective exercise of their democratic rights.”⁴⁷ That the Court would not protect legal documents containing legal advice given to the Council—a category of documents that has traditionally enjoyed far more privilege under the law than inter-departmental communications or scientific and technical findings—underscores the particularly restrictive application of any exception when serving in a legislative capacity.

The Public Access Regulation also contains an exception to certain exceptions. Assuming a document falls under the narrow category of documents within an exception, an “overriding public interest in disclosure” will nevertheless compel its release.⁴⁸ In short, the burden on an institution an exception with respect to environmental information is significant.

The review of the basis to a claim to exception is limited to the written record generated during the course of the two-stage administrative procedure. Any reason for the total or partial refusal offered after the prescribed time-limit is not subject to judicial review. A document may only be withheld if proper grounds for refusal are established by the Commission in written form. An overriding public interest in disclosure is sufficient to defeat an otherwise valid claim to most exceptions.⁴⁹

II. Failure to Provide Detailed Reasons for Requesting Extension

The Commission failed to provide detailed and cognizable reasons for extending the statutory time-limit for responding. Article 7(3) sets out the process for requesting a time extension:

In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that *detailed reasons are given*.

Time extensions are only for exceptional cases. This is not one of them. Further, in recognition of the exceptional nature of a time extension and its impact on meaningful public participation, the

⁴⁵ Public Access Regulation, Recital 6.

⁴⁶ Joined cases C-39/05 P and C-52/05 P, *Kingdom of Sweden and Maurizio Turco v. Council of the European Union* (2008), paragraph 46.

⁴⁷ Joined cases C-39/05 P and C-52/05 P, *Kingdom of Sweden and Maurizio Turco v. Council of the European Union* (2008), paragraph 46.

⁴⁸ Public Access Regulation, Article 4(3).

⁴⁹ Public Access Regulation, Article 4(2)-(3).

Community legislature requires detailed reasons to justify the extension. In the context of denials, the courts have interpreted the detailed-reason requirement as necessary to allow applicants to determine whether the decision is vitiated by error. These arguments are equally applicable to time extensions too. In *Kingdom of Sweden v. Commission of the European Communities and Others*, the European Court of Justice found that “as is apparent in particular from Articles 7 and 8 of the regulation, the institution is itself obliged to give reasons for a decision to refuse a request for access to a document.”⁵⁰ As a result, the court found that “it is incumbent on the institution concerned to give a detailed statement of reasons for such a refusal.”⁵¹ In *WWF European Policy Programme v. Council of the European Union*, the court found that this obligation to state the reasons for denial is “to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity to be contested.”⁵²

Despite the clear language of the Public Access Regulation, and the exceptional nature of a time extension, the Commission failed to provide detailed reasons for the extension, simply alleging a unquantified number of documents:

Your application is currently being dealt with. However, in view of the number of documents applied for, we have to extend the prescribed period by another of 15 working days before you receive a reply. We apologize for this delay.

This request is inadequate on its face. Time extensions are intended to be rare. Notifying time extensions as a matter of course is an abusive and thwarts the principles of transparency, openness, and democracy that underlie the Public Access Regulation and Aarhus Regulation. It is this type of abuse that is the very reason that detailed reasons are required, and those reasons must be proportionate to justify the exceptional nature of the extension.

Here, the Commission flaunts the limitations on time extensions in several ways. First, the Commission failed to confer. The Public Access Regulation provides an informal mechanism to resolve requests for a very large number of documents. Under Article 6(3) of the Public Access Regulation, “in the event of an application relating to... a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.”⁵³ Though the act of conferring is not a mandatory requirement, it is likely a condition precedent to taking the exceptional step of requesting a time extension. It is, in other words, an indication of good faith and duty incumbent on the Commission to avoid making exceptional time extensions. The Commission made no such effort to confer despite Applicants invitation to do so.

Second, The Commission failed to provide detailed reasons for the time extension. The simple recital of “in view of the number of documents applied for” is inadequate to meet the detailed-reason requirement. It is dismissive of the “concept of openness”⁵⁴ “transparency of the decision-making process,”⁵⁵ and the “right of public access to documents.”⁵⁶ In the response given, the Commission neither divulges the number of documents covered in the request nor gives an indication of their length. The Commission also fails to describe any reasons for the delay or the circumstances surrounding the need for more time, leaving Applicants to divine them. A knock-on impact of the

⁵⁰ Case C-64/05 P, *Kingdom of Sweden v. Commission of the European Communities and Others* (2007).

⁵¹ Case C-64/05 P, *Kingdom of Sweden v. Commission of the European Communities and Others* (2007), paragraph 69.

⁵² Case T-264/04, *WWF European Policy Programme v. Council of the European Union* (2007), paragraph 36, citing Case T-187/03, *Scippacercola v Commission* (2005), paragraph 66.

⁵³ Public Access Regulation, Article 6(3).

⁵⁴ Public Access Regulation, Recital 1.

⁵⁵ Public Access Regulation, Recital 3.

⁵⁶ Public Access Regulation, Recital 4.

delay is that the Commission precludes, in effect, the democratic right to participate early in the environmental decision-making process on biofuels – a right protected under Article 9 of the Aarhus Regulation.⁵⁷

In order to avoid any adverse impacts from a time extension, Applicants requested that all documents be produced on a rolling basis:

Please produce the documents on a rolling basis. At no point should the Commission's search for—or deliberations concerning—certain documents delay the production of others that the Commission has already retrieved and elected to produce.

The request that documents be disclosed on a rolling basis was made in response to the Commission's history of abusing time extensions without basis or justification – akin to a delay tactic that thwarts public participation. To date, the Commission has not produced a single document.

Third, the Commission has exhibited a pattern and practice of maladministration on documents revealing the science underlying its biofuel policies. Similar obstructionism and delay have already resulted in one lawsuit for similar documents.⁵⁸ In that lawsuit, as here, the Commission failed to provide detailed reasons and justifications for its actions. The result is that the public—and, at times, the courts when compelled to review—must expend scarce time and resources to respond to the Commission's nonfeasance in the absence of a fully developed record upon which to base a decision. Such antics violate the text and the spirit of the law.

III. There is an Overriding Public Interest in Disclosure of the Request Documents

There is an overriding public interest in disclosure of the requested documents. As a general matter, the public interest in reducing greenhouse-gas emissions to curb climate change is irrefutable. In fact, at the time of submission of this confirmatory application, the leaders of the world are urgently negotiating a new climate treaty. The public has every right to be fully informed and involved to ensure that EU climate policies, such as promoting biofuels, do not overstate greenhouse-gas-emission reductions or, as many suspect, actually increase greenhouse-gas emissions.⁵⁹ The public also has an interest in ensuring that the biofuel targets do not result in the destruction of forests and loss of biodiversity.⁶⁰ The increase in biofuel consumption without adequate accounting for indirect land-use change, however, is expected to do just that.⁶¹ Both these interests—the change in the Earth's climate and the conservation of biological diversity—are recognised as “common concern[s] for humankind” in treaties signed and ratified by the European Union.⁶²

More specifically, however, provisions in RED and FQD set targets that artificially increase the demand for biofuels. That is their purpose under the assumption that it will reduce GHG emissions. But several scientific studies published in reputable periodicals have concluded that biofuels may actually increase greenhouse-gas emissions, especially when taking into consideration the impacts of

⁵⁷ Aarhus Regulation, Article 9.

⁵⁸ *ClientEarth e.a. v. Commission*, Case No t_120/10 (filed on 8 March 2010).

⁵⁹ European Commission, *Terms of Reference, Administrative Arrangement between JRC and DG ENV on Indirect Land Use Change Emissions from Biofuels*, Annex No. 1 to the Offer No. H01-IES/MAM/D(08)(3349)29546, p. 1.

⁶⁰ RED, Recital 69; FQD, Recital 11.

⁶¹ See, e.g., RED, Recital 85.

⁶² United Nations Framework Convention on Climate Change (UNFCCC), Recital 1; Convention on Biological Diversity (CBD), Recital 3.

indirect land-use change.⁶³ If the Commission is serious about promoting only those biofuels that reduce GHG emissions, the public has a clear interest that overrides any other in knowing which those biofuels are and what are the risks associated with the policy as a whole. The gravity of the climate crisis puts a lot of effort on all actors in the society to reduce GHG emissions. It is urgent that the accounted GHG reductions—those claimed on paper—correspond to GHG reductions in reality, which may not be the case for biofuels.

The requested study and correspondence also address biofuel usage scenarios that are likely to exist within the EU, completing the GHG picture for biofuels. From the beginning, the Commission envisioned biofuels being the “primary” beneficiary of the 10% target in transport.⁶⁴ Early in the legislative process, the Commission minces no words when discussing the objectives of its proposal:

[I]t is proposed that each Member State shall achieve at least a 10% share of renewable energy (primarily biofuels) in the transport sector by 2020. This is done for the following reasons: (1) the transport sector is the sector presenting the most rapid increase in greenhouse gas emissions of all sectors of the economy; (2) biofuels tackle the oil dependence of the transport sector, which is one of the most serious problems of insecurity in energy supply that the EU faces; (3) biofuels are currently more expensive to produce than other forms of renewable energy, which might mean that they would hardly be developed without a specific requirement.⁶⁵

The Commission launched four studies to examine ILUC issues, including the study by the International Food Policy Research Institute (IFPRI).⁶⁶ The IFPRI study uses a global computable general equilibrium (CGE) model to estimate the impact of EU biofuels policies.⁶⁷ As with any model, the inputs and assumptions influence the conclusions. The IFPRI study suffers from at least two limitations that have the practical effect of reducing ILUC impacts. First, the IFPRI study assumes that biofuel consumption comprises only a 5.6% share of the mix of biofuels and fossil fuels despite the 10% target.⁶⁸ Furthermore, the sensitivity analysis shows that the higher the percentage of biofuel usage is, the greater the adverse impacts we can expect. The authors confirm this, noting that “[s]imulations for EU biofuels consumption above 5.6% of road transport fuels show that ILUC emissions can rapidly increase and erode the environmental sustainability of biofuels.”⁶⁹ The requested documents contain simulations and conclusions under a 7% scenario, allowing the public to assess more accurately the true impacts of the 10% target. Second, the study assumes a 45%/55% ratio between biodiesel and bioethanol, which makes the biofuel policy look better in terms of GHG emissions.⁷⁰ The authors promote investigating the assumption behind the ratio, noting that it “strongly influence the results.”⁷¹ It is important to understand how this ratio was determine and what impact it has on results,. Despite these curious figures, the IFPRI study concludes that there “is indeed indirect land use change associated with the EU biofuels mandate.”⁷² The IFPRI study further finds that “[i]t is clear... that increased demand for biofuels will have impact on the demand for land

⁶³ See, e.g., Searchinger and Fargione, *Science Magazine* (2008); The Gallagher Review for the UK Government (2008); The German Study by WBGU (2008); UNEP Sensitivity Analysis of GHG balances of Biofuels (2009).

⁶⁴ COD/2008/0016.

⁶⁵ COD/2008/0016.

⁶⁶ International Food Policy Research Institute, *Global Trade and Environmental Impact Study of the EU Biofuels Mandate*, Final Draft Report (March 2010) [hereinafter “IFPRI Study”].

⁶⁷ IFPRI Study, p. 9.

⁶⁸ IFPRI Study, p. 10.

⁶⁹ IFPRI Study, p. 11.

⁷⁰ IFPRI Study, p. 12.

⁷¹ IFPRI Study, p. 12.

⁷² IFPRI Study, p. 11.

and will result in potentially significant land use changes.”⁷³ In this context, the IFPRI study comes out with feedstock-specific figures on the marginal ILUC impacts.

The figures are startling. The IFPRI study computed the marginal effect for each feedstock in 2020:

Marginal ILUC emissions from biofuels in 2020

EU 5.6% Biofuel Mandate (existing trade barriers, no peatland effects)	Marginal ILUC Emissions in gCO₂/MJ Per Year (emissions annualised over 20 years)
Sugar beet ethanol	16.07
Sugar cane ethanol	17.78
Wheat ethanol	37.26
Maize ethanol	54.11
Rapeseed biodiesel	53.01
Soybean biodiesel	74.51
Sunflower biodiesel	59.87
Palm oil biodiesel	46.40

In order to count toward the 10% target, a biofuel must meet the 35% GHG threshold, which means that it must emit less than 54,47 gCO_{2eq}/MJ on the life cycle basis. The table above demonstrates that several biofuels are already close to or have exceeded those emissions on indirect land-use change alone – without incorporating any other sources of GHG emissions.⁷⁴ In fact, to put this into perspective, several biofuels that the European Union might rely on to meet its targets are shown to be worse than fossil fuels themselves under a 5.6% scenario, much less the 10% target for renewables in transport.⁷⁵ A 5.6% scenario seems to be a very unrealistic assumption considering that the Commission originally attested and continues to attest that the 10% target is to be primarily met with biofuels.

These impacts begin to outline that the policy promoting biofuels might contradict other EU policies, such as the ones that aim at reducing CO₂ emissions, halting deforestation and biodiversity loss. It also reveals the winners and losers in the biofuel industry in terms of GHG emissions, information that should serve to direct the public and private investments of climate-conscious investors. The public has an overriding public interest in ensuring that biofuel science is not manipulated to fit biofuel policy but that the biofuel policy is based on the best available science. The Public Access Regulation affirms this public interest, stating in Article 12(3) that, “[w]here possible, other documents, notably documents relating to the development of policy or strategy, should be made directly available.”⁷⁶

CONCLUSION

The Commission is a public institution funded with public moneys making environmental public policy. The public has the right to participate. With this confirmatory application for reconsideration, Applicants respectfully request that the Secretary-General grant access to the requested documents and information therein, providing access in accordance with Article 10.

⁷³ IFPRI Study, p. 20.

⁷⁴ FQD, Annex IV(C)(19); see also RED, Annex V(C)(19).

⁷⁵ FQD, Annex IV(C)(19); see also RED, Annex V(C)(19).

⁷⁶ Public Access Regulation, Article 12(3).

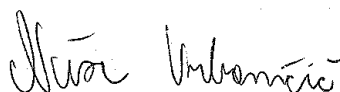
Sincerely,



Tim Grabiell
ClientEarth
Staff Lawyer



Ariel Brunner
Birdlife International – European Division
Head of European Union Policy



Nuša Urbančič
Transport & Environment
Policy Officer



Pieter Depous
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ClientEarth is a non-profit organization dedicated to safeguarding the planet—its flora, fauna, ecosystems, people—for the benefit current and future generations. Founded in 2007, ClientEarth attorneys are ushering a new era of environmental protection in Europe and beyond, pioneering innovative ways to protect the environment through the power of law. With offices in London and in Brussels, ClientEarth provides legal and technical capacity to the environmental movement. Activities focus on transformational changes to the European legal and legislative landscape, including opening up the European courts to citizen suits, advocating for effective environmental legislation with binding and enforceable provisions, bringing transparency to European decision-making; and empowering non-governmental organizations.

Transport & Environment is an independent not-for-profit organisation whose mission is to promote transport policy that is based on science and the principles of sustainable development to both minimise the use of energy and land—and associated impacts on the environment and health—while maximising safety and guaranteeing sufficient access for all. The Brussels-based team focuses on the areas where European Union policy has the potential to achieve the greatest environmental benefits, including technical standards for vehicle fuel efficiency and pollutant emissions, environmental regulation of international transport, such as aviation and shipping, European rules on infrastructure pricing, and environmental regulation of energy used in transport. Established in 1990, Transport & Environment represents over 50 organisations across Europe, mostly environmental groups and sustainable transport campaigners.

BirdLife International is a global Partnership of conservation organizations that strives to conserve birds, their habitats and global biodiversity, working with people towards sustainability in the use of natural resources.

BirdLife partners operate in more than 100 countries and territories worldwide. BirdLife International is represented in 43 countries in Europe and is active in all EU Member States.

The European Environmental Bureau is a federation of more than 140 environmental citizens' organisations based in all EU Member States and most Accession Countries, as well as in a few neighbouring countries. These organisations range from local and national, to European and international. The aim of the European Environmental Bureau is to protect and improve the environment of Europe and to enable the citizens of Europe to play their part in achieving that goal.

ANNEX C.7



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Direction E

SG-E-3

Transparency, Relations with Stakeholders and External Organisations

Brussels, 29/06/2010
SG.E3/HP/psi – sg.e.3(2010)420798

Mr Tim Grabiell

By email only: tgrabiell@clientearth.org

Subject: Your confirmatory application under Regulation (EC) 1049/2001 for access to documents - GESTDEM No 2010/1595

Dear Mr Grabiell,

I refer to your e-mail dated 8 June 2010, by which, pursuant to Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents¹, you lodge a confirmatory application concerning access to documents registered under the above-mentioned case number.

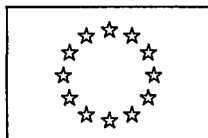
Your application is currently being handled. However, due to the complexity of the issue and the need to consult all the involved internal services, we have not yet been able to carry out a proper analysis of the requested documents in order to take a final decision. Consequently, we will not be able to reply to your confirmatory request within the prescribed time limit which expires today. Therefore, we have to extend this period by another 15 working days in accordance with Article 8(2) of Regulation 1049/2001. The new deadline expires on 20/07/2010. I apologise for any inconvenience this delay may cause.

Yours sincerely,

Marc MAES
Deputy Head of unit

¹ OJ L145, 31.05.2001, p.43.

ANNEX C.8



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Direction E
SG-E-3
Transparency, Relations with Stakeholders and External Organisations

Brussels,
SG.E3/HP/rc -

Mr Tim Grabiël

By email only: tgrabiël@clientearth.org

Subject: Your confirmatory application under Regulation (EC) 1049/2001 for access to documents - GESTDEM No 2010/1595

Dear Mr Grabiël,

I refer to your e-mail dated 8 June 2010, by which, pursuant to Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents¹, you lodge a confirmatory application concerning access to documents registered under the above-mentioned case number.

I also refer to our letter of 29 June 2010 in which the time limit for handling your confirmatory request was extended by another fifteen working days. This time limit will expire on 20 July 2010.

Unfortunately, we will not be able to provide you with a final reply to your request within this extended time limit, since the required analysis of the documents and the consultation with the third party concerned, in accordance with Article 4(4) of Regulation 1049/2001, as well as the internal consultations take more time than usual. However, we aim to send you a reply within the shortest possible time limit. I regret this additional delay and apologise for any inconvenience this may cause.

Yours sincerely,

ALVAREZ CUARTERO
Maria Isabel

¹ OJ L145, 31.05.2001, p.43.