

Reply of the European Commission on a proposal for a solution from the European Ombudsman
- Complaint by Mr █████ ref. 1527/2020/MAS

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

Mr █████ requested on 21 April 2020 access to “A list of all Countries of Origin of Used Cooking (UCO) for the years 2016, 2017, 2018 and 2019, together with the volumes of UCO feedstock collected for each Country of Origin for each year, as reported to the European Commission by all voluntary certification schemes for biofuels sustainability under the Renewable Energy Directive” (GESTDEM 2020/2287).

By letter of 25 May 2020, the Directorate-General for Energy informed Mr █████ that it was not able to identify any document as falling within the scope of his request. The Directorate General for Energy explained that ‘[w]hile the Commission receives reports from the voluntary schemes recognised by the Commission according to Article 18(4) of Directive 2009/28/EC, the Commission does not produce any documents that would extract the information you are seeking from those reports.’

Mr █████ lodged on 29 May 2020 a confirmatory application taking the view that the requested information is in the possession of DG ENER in an easy to access format such as text file, simple database or excel sheet, and it would require no more than a few moments to copy it and make it available.

In response to this confirmatory application, the Commission confirmed by Decision of 21 October 2020 that it does not hold any documents that would correspond to the description given in the application. The Commission further clarified that the data provided in the framework of the reports submitted by the voluntary schemes in accordance with the Renewable Energy Directive do not cover all certified material, as they only include information on the amount of feedstocks certified under each certified scheme or specifically circumscribe used cooking oil (as per Mr █████ request) as they extend to all feedstock.

II. THE COMPLAINT TO THE EUROPEAN OMBUDSMAN

Mr █████ lodged a complaint to the European Ombudsman in September 2020 (1527/2020/MAS) criticising the Decision of the Commission not to disclose the requested data.

III. EUROPEAN OMBUDSMAN’S INQUIRY

The Ombudsman opened an inquiry to determine whether the Commission holds any documents that would correspond to the complainant’s request. In October 2020, the Ombudsman’s inquiry team held a meeting with the Commission and inspected a sample of the reports submitted to it by the voluntary schemes.

Having inspected the sample of documents provided by the Commission, the Ombudsman’s inquiry team confirmed that the Commission does not hold a single document that includes all the information requested by the complainant and that it is not obliged to produce a document as requested by the complainant by manually compiling the data it holds. The team also

confirmed that the documents that the Ombudsman's inquiry team inspected do not allow for easy extraction of the data using pre-programmed search tools.

However, the Ombudsman argues that the complainant would be interested in receiving the information on the country of origin and volumes of UCO even if it was not compiled in a single document and that the Commission should therefore consider giving access to all the documents that it holds that contain information on origin and volumes of UCO for the years 2016 to 2019.

The Ombudsman argued that the Commission should assess whether there is information contained in these documents that is protected under the EU rules on public access and should therefore be redacted. In this context, the Ombudsman argued that the data on the volumes of UCO feedstock should be considered information relating to emissions into the environment and that, in such cases, the grounds for refusing access should be interpreted restrictively.

Based on this argument, the Ombudsman proposed that the Commission should review the documents it holds containing the countries of origin and relevant volumes of production and import of used cooking oil for the period indicated by the complainant with a view to disclosing them.

IV. THE COMMISSION'S COMMENTS TO THE COMPLAINANT'S ARGUMENTS

The Commission does not hold any documents that would correspond to the description given in the application. We understand that the Ombudsman shares this view.

As the documents containing the countries of origin and relevant volumes of production and import of used cooking oil referred to by the Ombudsman were not covered by the original request, they were not disclosed on the basis of that request.

Furthermore, the request was sufficiently precise insofar as the complainant made clear that he intended to use the document to identify fraud in the EU biodiesel sector. As confirmed in the Ombudsman's proposal, the request was made with the aim of verifying if the reported volumes of UCO were greater than production capacities and if there was mislabelling of other oils as UCO. This shows that the request did not seek access to a number of documents which contained only some of the information requested by the complainant.

Finally, the Commission clarified in its Decision to the complainant that it is in possession of the reports submitted by the voluntary schemes in accordance with the Renewable Energy Directive. The complainant could therefore ask for access to these documents. In such an event, the Commission would need to establish, in accordance with the exceptions laid down in Regulation (EC) No 1049/2001, whether the reports can be disclosed in whole or in parts.

In this context, the Commission would also like to inform that it recently published a new report on the operation of the voluntary schemes, which includes data on the origin of used cooking oil that is used for the production of biofuels¹ as well as an assessment of the data. The Commission would like to invite the Ombudsman and the complainant to consider whether this report already satisfies in whole or in part his interest in the information he seeks to access.

¹ <https://op.europa.eu/en/publication-detail/-/publication/86eb1ce8-11b5-11eb-9a54-01aa75ed71a1>

V. CONCLUSION

The assessment of the Commission as regards the original request of the complainant for access to documents remains unchanged. As also confirmed by the Ombudsman, the Commission does not possess the requested document, and hence it cannot be disclosed on the basis of the original request.

However, in view of the Ombudsman's proposal that the Commission should review the documents it holds containing the countries of origin and relevant volumes of production and import of used cooking oil for the period indicated by the complainant with a view to disclosing them, the Commission would like to underline that the complainant may submit a new request for the reports that are in the possession of the Commission if he considers that the data already publicly available in the recently published report on the operation of the voluntary schemes are not sufficient. In the event of such a new request, the Commission will of course consider disclosure of the said documents to the widest extent possible, taking into account the exceptions to the right of access laid down in Regulation (EC) No 1049/2001, and in conformity with the procedure set out in that Regulation.

For the Commission
Helena DALLI
Member of the Commission

