EUROPEAN COMMISSION
HEALTH AND FOOD SAFETY DIRECTORATE-GENERAL
Director General

Brussels,
SANTE/E4/SV/np

By registered mail with acknowledgment of receipt

Mr Vincent Harmsen
Pieter Schroonsstraat 58
B - 1830 Machelen

Advance copy by email:
ask+request-2659-46462a11@asktheeu.org

Dear Mr Harmsen,

Subject: Your application for access to documents – Ref GestDem No 2016/1133

We refer to your email dated 04/03/2016 in which you make a request for access to documents, registered on 08/03/2016 under the above mentioned reference number.

1. Scope of your request

In your request you asked access on the basis of Regulation (EC) No 1049/2001[1] to "*all correspondence (including emails), agendas, minutes of meetings and any other reports of such meetings where the (science-based) criteria for endocrine disruptors (also spelled: disrupters) were discussed/mentioned between DG SANTE officials and officials/representatives of (one or more of) the following DGs/organisations:*

- Secretariat-General
- DG AGRI
- DG TRADE
- DG GROWTH
- US EPA
- US government
- AmCham
- CropLife
- ACC
- ECPA
- Cefic
- Burson-Marsteller
- BASF
- Bayer

[1] Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

- Dow Chemicals
- Monsanto
- DuPont

(between January 2015 and March 5th 2016)."

You further specified that "*When 'officials' are mentioned in this request this includes the Commissioners and their Cabinet members, as well as Commission President Jean-Claude Juncker and his Cabinet*".

Your request relating to "*Commission President Jean-Claude Juncker and his Cabinet*" has been registered under the following reference number: GestDem No 2016/1166.

2. Identification of the concerned documents

We have identified 83 documents as falling (partially or entirely) under the scope of your request (see table attached to this reply).

3. Assessment of the documents

Having examined the documents, we have come to the conclusion that:

i. full access can be granted to the documents under numbers: 4, 9, 14, 22, 30, 31, 51, 52, 57, 62, 67 and 83;

ii. partial access can be granted to the documents under numbers: 1, 2, 3, 5, 7, 8, 10, 11, 12, 13, 15, 19, 21, 23, 24, 25, 26, 27, 28, 29, 36, 37, 38, 39, 41, 42, 44, 45, 46, 47, 50, 53, 54, 55, 56, 58, 59, 60, 61, 63, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80, 81 and 82;

iii. the documents under numbers 6, 16, 17, 18, 20, 32, 33, 34, 35, 40, 43, 48, 49, 64, 65 and 79 are protected in their entirety.

Please find attached the documents under numbers 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 36, 37, 38, 39, 41, 42, 44, 45, 46, 47, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82 and 83 as well as a table containing the assessment carried out on their content on the basis of Regulation (EC) No 1049/2001.

You may reuse Commission documents free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Documents originating from third parties cannot be re-used without the agreement of the originators.

4. Reasons for refusal

The documents under numbers 6, 7, 16, 17, 18, 24, 25, 42, 43, 58, 59, 65, 71, 78 and 79 contain notes and annexes to the Commissioner, replies to the services from the Cabinet; preliminary drafts of the minutes and minutes of internal Commission meetings and the comments from other services of the Commission related to the preparation of the impact assessment on criteria to identify endocrine disruptors.

These documents contain information related to the ongoing impact assessment process carried out for defining the criteria for the determination of endocrine disruptors in the

context of the implementation of the Plant Protection Product Regulation[2] and Biocidal Products Regulation[3]. The premature disclosure of these documents would seriously undermine the decision-making process of the Commission, as it would reveal preliminary views and policy options which are currently under consideration. The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure. Therefore, the exception laid down in Article 4(3), first subparagraph of Regulation (EC) No 1049/2001 applies to these documents.

Partial access can be granted to the documents 7, 24, 25, 42, 58, 59, 71 and 78.

We have considered whether partial access could also be granted to the documents 6, 16, 17, 18, 43, 65 and 79. These documents are fully protected by the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

The documents under numbers 32, 33, 34, 35, 40, 48 and 49 contain information that concern, among others, the on-going discussions between the European Union and non EU States on the topic of endocrine disruptors in the context of the WTO SPS Committee. These documents contain information relating to non EU States' policies and their disclosure would undermine the on-going international consultations on the topic of endocrine disruptors. Releasing such documents would undermine the credibility of the Commission to take part in negotiations with non EU States on a confidential basis and create tensions in the relations with these countries. Therefore, the exception laid down in Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 applies.

We have considered whether partial access could be granted to the documents 32, 33, 34, 35, 40, 48 and 49. These documents are fully protected by the exception laid down in Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

5. Overriding public interest

The exception to the right of access provided for in Article 4(3), first paragraph, of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested documents. In your application you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001. The public interest in this case is rather to protect the Commission's on-going institutional and political decision-making process on the criteria to identify endocrine disruptors.

6. Protection of personal data

Documents under numbers 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 13, 15, 19, 20, 21, 23, 24, 25, 26, 28, 29, 37, 38, 41, 42, 43, 50, 53, 54, 55, 56, 58, 59, 60, 61, 63, 64, 66, 68, 69, 70, 71, 72, 73, 74, 77, 78, 81 and 82 contain personal data, such as the names of ECPA (European

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[2] Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

[3] Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

Crop Protection Association), Bayer CropScience and US EPA staff or Commission's non-managerial staff. Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001[4].

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from such personal data.

We have considered whether partial access could be granted to the documents 20 and 64. The exception laid down in Article 4(1)(b) Regulation (EC) No 1049/2001 applies to the full content of these documents as they are distribution lists.

7. Means of redress

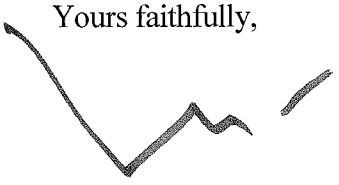
May you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the address below. The Secretary-General will inform you of the result of such review within 15 working days from the date of registration of your request. You will either be given access to the documents or your request will be rejected, in which case you will be informed of what further action is open to you.

All correspondence should be sent to the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



Xavier Prats Monné

Enclosure: List of documents falling under the scope of the request

[4] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).