

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Food and feed safety, innovation
Pesticides and biocides

SANTE/E4/AS/od

Sent by email only to:

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Dear Mr Harmsen,

Subject: Your applications for access to documents – Ref GestDem No 2016/7243, 2016/7261 and 2017/40

We refer to your emails dated 22/12/2016 and 03/01/2017 in which you make three requests for access to documents, registered on 23/12/2016 and 03/01/2017 under the above mentioned reference numbers.

The handling of your requests involves the assessment of a large number of documents, some originating from third parties. The analysis of these documents, together with the need to consult the third parties concerned in accordance with Article 4(4) of Regulation (EC) No 1049/2001, cannot be expected to be completed within the normal time limits set out in Article 7 of Regulation (EC) No 1049/2001. This should be viewed in the light that in addition to these three requests, you have made three other access to documents requests (registered as GestDem 2016/7237, 2016/7241 and 2016/7249) on topics that need to be handled by the same Unit in DG SANTE. This has created an exceptional and excessively high additional workload for the unit; consequently, your requests cannot be handled within the given timeframe.

However, the Regulation also provides for a possibility to confer with applicants in order to find a fair solution when applications relate to a very long document or concerns a very large number of documents. Article 6(3) provides that in the event of applications relating to a very long document or to very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

In accordance with the case law of the EU Courts, such a solution can only concern the content or the number of documents applied for, not the deadline for replying.¹ This means that the scope of the requests must be reduced in a way that would enable its treatment within the extended deadline of 15 + 15 working days.

Based on the above-mentioned provision, we would kindly ask you to specify the objective of your requests and your specific interest in the documents requested², and whether you could narrow down the scope of your requests (i.e. the subject matters and timeframe covered), so as to reduce it to a more manageable amount of documents.

If that is not possible and if you maintain your requests for access to all documents concerned by your application, we propose to handle your applications in successive stages. If you accept this proposal, you could indicate an order of priority, which we would try to follow as much as possible in handling your applications. This means that parts of your applications would be considered to have been introduced in successive stages and will be dealt with within the corresponding new time-limits. You would in that case receive, at regular intervals, batches of documents which have been cleared for full or partial release and/or a reasoned reply explaining why some (parts of the) documents cannot be disclosed.

¹ Judgment of the Court of Justice of 2 October 2014 in case C-127/13, *Guido Strack v Commission*, paragraphs 26-28.

² Ibid, paragraph 28; Judgment of the General Court (then 'Court of First Instance') of 22 May 2012 in case T-344/08, *EnBW Energie Baden-Württemberg v Commission*, paragraph 105.

Alternatively, you can formally withdraw those parts of your requests that cannot be handled within the extended (30 working days, counting from the date of registration of your application on 23/12/2016 and 03/01/2017) deadline of Regulation (EC) No 1049/2001, and re-introduce applications for access to these parts in successive stages.

In order to help you to narrow down your request, we propose the following:

- i. In your requests, when you are referring to "*on the topic of the active substance glyphosate*" we propose to narrow down the scope to be "*on the topic of the active substance glyphosate in relation to the re-approval of the active substance*".
- ii. Merge the request GestDem 2017/40 with GestDem 2016/7243 as parts of the requests are very similar (in terms of stakeholders concerned as well as overlapping in time). Our proposal is to add the stakeholders mentioned in GestDem 2017/40 to the list of stakeholders in GestDem 2016/7243, and thus withdraw request GestDem 2017/40.
- iii. Regarding part of request GestDem 2016/7261 where you ask for documents "*on the topic of the active substance glyphosate, all emails with in attachment scientific studies, or in general documents containing conclusions drawn by scientists or scientific organizations, sent to officials/representatives of the European Commission (all DGs, including the SG) by third parties. This request includes the emails and their attachments.*" We would like to inform you that the Commission in the context of access to documents is not obliged to send to the requestors published scientific studies already available to the public in scientific journals and the cover letters would have no added value for your professional activity. We therefore propose to you to withdraw this part of the request.
- iv. Reduce the timeframe of requests GestDem 2016/7243 and 2016/7261, as these requests entail documents "*from March 2015 to December 22nd 2016*", which is a very large scope for access to information requests. We propose a reduction of the scope to encompass documents from 1 January 2016 to 3 January 2017.

In order to enable us to respect the time-limits of Regulation (EC) No 1049/2001, we would ask you for a swift reply to our invitation to propose a fair solution, within five working days at the latest:

- by email to: sante-consult-e4@ec.europa.eu


If you have any questions concerning the invitation, you can contact us:

- by email at: sante-consult-e4@ec.europa.eu
- by telephone at: (+32) (0) 2 299 11 11

In the absence of a reply within five working days, we will unilaterally restrict the scope of your application to those parts that can be dealt with within the extended deadline of 30 working days, counting from the registration of your application 23/12/2016 and 03/01/2017.

Thank you in advance for your understanding.

Yours sincerely,


Michael Flüh
Head of Unit