



EUROPEAN COMMISSION
Directorate-General for Trade

The Director General

Brussels **21 FEB. 2017**
trade.a.3.dir(2017)817151

***By registered letter with acknowledgment
of receipt***

Vincent Harmsen
Rue au Bois 216
1150 Brussels
Belgium

Advance copy by email:
ask+request-3704-c510b89d@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2017/0065

Dear Mr Harmsen,

I refer to your email of 4 January 2017 in which you make a request for access to documents under Regulation (EC) No 1049/2001¹ ("Regulation 1049/2001"), registered on the same date under the above mentioned reference number.

You request access to "*documents which contain the following information:*

- *on the topic of endocrine disruptors (also spelled: disrupters), all emails send by and send to (also in cc) DG Trade official Ignacio García Bercero (between July 2013 and July 2016).*
- *on the same topic, all minutes of meetings or any other reports of such meetings attended by DG Trade official Ignacio García Bercero (between July 2013 and July 2016)".*

We have identified the following documents that fall under the scope of your request:

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

- An internal email dated 27 February 2014 containing the report of a meeting with SC Johnson on TTIP and chemicals on 24 February 2014 (Ares2016)2254283) ("**document 1**");
- a summary report of a meeting between DG Trade and Pesticides Action Network – Europe on 21 October 2014 and two position papers of that organisation on the subject of endocrine disruptors ("**document 2**") (Ares(2015)5113836).

An additional document, which is the report of meeting with ECPA on 28 April 2015 together with an enclosed letter to the Commission (Ares(2015)2559996), was also identified. As this document was already released to you on 7 February 2017 in reply to your request GestDem 2016/1096, we refer to our assessment contained in our reply to the mentioned request.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law², when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001. Such assessment is carried out in a multi-step approach: first, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception; second, it must examine whether disclosure of the parts of the document in question pose a "*reasonably foreseeable and not purely hypothetical*" risk of undermining the protection of the interest covered by the exception; third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Articles 4(2) and 4(3) of Regulation 1049/2001, the institution is required "*to ascertain whether there is any overriding public interest justifying disclosure*"³.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents⁴, "*the exceptions to that right [...] must be interpreted and applied strictly*"⁵.

Having carefully examined the documents identified above in light of the applicable legal framework, I am pleased to inform you that they can all be released.

The annexes to document 2 are fully released. As regards document 2, only names and other personal data have been removed pursuant to Article 4(1) (b) of Regulation 1049/2001 and

² Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

³ *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52 and 64.

⁴ See Regulation (EC) No 1049/2001, recital (4).

⁵ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

in accordance with Regulation (EC) No 45/2001⁶ ("Regulation 45/2001"). Hence, the main content of this document is accessible.

In document 1, in addition to personal data, other information was redacted pursuant to Article 4(1) (a) third indent concerning the protection of the public interest as regards international relations.

The reasons justifying the application of the abovementioned exceptions are set out below in Sections 2.1 and 2.2.

2.1 Protection of international relations

Article 4(1) (a) third indent, of Regulation 1049/2001 provides that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: the public interest as regards: [...] international relations".

The Court of Justice has acknowledged that the institutions enjoy "a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest"⁷. More specifically, the General Court has stated that "it is possible that the disclosure of European Union positions in international negotiations could damage the protection of the public interest as regards international relations" and "have a negative effect on the negotiating position of the European Union"⁸. It added that "in the context of international negotiations, unilateral disclosure by one negotiating party of the negotiating position of one or more other parties [...] may be likely to seriously undermine, for the negotiating party whose position is made public and, moreover, for the other negotiating parties who are witnesses to that disclosure, the mutual trust essential to the effectiveness of those negotiations"⁹.

Two sentences from document 1 were removed as they contain opinions and views of individual staff members in relation to the objectives and results that the TTIP negotiations should achieve in their view, and information which indirectly reveals the position of certain relevant actors in the negotiations. The disclosure of personal views and positions on issues on which an official position of the Commission has not yet been adopted may weaken the credibility of the Commission in the ongoing negotiations as well as lead the EU's negotiating partners to potential misleading conclusions. Finally, the disclosure of the position of relevant counterparts in the ongoing negotiation would undermine in a reasonably foreseeable manner the climate of confidence and trust between the EU and its negotiating partners. Preserving this sphere of mutual trust is particularly important. Trading partners need to be able to confide in each other's

⁶ Regulation (EC) No 45/2001 of the European Parliament and the 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.

⁷ Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

⁸ Judgment in *Sophie in't Veld v Commission*, T-301/10, EU:T:2013:135, paragraphs 123-125.

⁹ *Id.*, paragraph 126.

discretion and to trust that they can engage in open and frank exchanges of views without having to fear that these views and positions may in the future be exposed. As the General Court acknowledged, *"establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise"*¹⁰.

2.2 Protection of privacy and integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that *"[t]he institutions shall refuse access to a document where 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 Court of Justice has ruled that *"where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data" "the provisions of Regulation 45/2001, of which Articles 8(b) and 18 constitute essential provisions, become applicable in their entirety"*¹¹.

Article 2(a) of Regulation 45/2001 provides that *"'personal data' shall mean any information relating to an identified or identifiable natural person [...]"*. The Court of Justice has confirmed that *"there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of 'private life'"*¹² and that *"surnames and forenames may be regarded as personal data"*¹³, including names of the staff of the institutions¹⁴.

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"* and additionally *"if there is no reason to assume that the legitimate interests of the data subjects might be prejudiced"*. The Court of Justice has clarified that *"it is for the person applying for access to establish the necessity of transferring that data"*¹⁵.

Documents 1 and 2 contain names and other personal information that allow the identification of natural persons.

I note that you have not established the necessity of having these personal data transferred to you. Moreover, it cannot be assumed, on the basis of the information available, that disclosure of such personal data would not prejudice the legitimate interests of the persons concerned. Therefore these personal data shall remain

¹⁰ Judgment in *Sophie in't Veld v Commission*, T-301/10, EU:T:2013:135, paragraph 126.

¹¹ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 101; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraphs 63 and 64.

¹² Judgment in *Rechnungshof v Rundfunk and Others*, Joined cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

¹³ Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

¹⁴ Judgment in *Guido Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 111.

¹⁵ *Id.*, paragraph 107; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 77.

undisclosed. However, the name of the Director for Neighbouring countries, USA and Canada in Directorate-General for Trade is disclosed.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

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

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

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'X' or 'J' shape, followed by a horizontal line extending to the right.

Jean-Luc DEMARTY

Enclosures:

- Released documents