



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

**Director-General**

Brussels,  
SANTE/E4/RC/bg(2017)5009084

**By registered mail with  
acknowledgment of receipt**

Mr Peter Teffer  
EUobserver  
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1000 Brussels  
Belgium

***Advance copy by e-mail:***  
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Dear Mr Teffer,

**Subject: Your application for access to documents – Ref GestDem No  
2017/5071**

We refer to your email dated 07/09/2017 registered on 08/09/2017 under the above mentioned reference number, by which you request access to documents on the basis of Regulation (EC) No 1049/2001<sup>1</sup>.

**1. Scope of your request**

In your request, you asked access on the basis of Regulation (EC) No 1049/2001 to:  
*"All written comments the European Commission received from member states regarding its proposal on renewing the license for glyphosate, following the Commission's request for these comments at the 19-20 July standing committee on plants, animals, food and feed"*.

**2. Identification and assessment of the concerned documents**

We have identified 8 documents falling under the scope of your request. A table with the list of documents containing the assessment carried out on their content on the basis of Regulation (EC) No 1049/2001 is attached.

Having examined the documents, we have come to the conclusion that the documents are protected in their entirety.

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

### 3. Reasons for refusal

#### *Ongoing decision-making*

Document 1, 2, 3, 4, 5, 6, 7 and 8 are comments received from Member States on the draft Commission Implementing Regulation renewing the approval of the active substance glyphosate.

The draft Commission Implementing Regulation renewing the approval of the active substance glyphosate was presented for the first time by the Commission on 20 July 2017 at the Standing Committee on Plants, Animals, Food and Feed, Section Phytopharmaceuticals – Plant Protection Products – Legislation. Initial discussions with Member States then took place. However, the decision-making process is still ongoing as the act is still to be adopted according to its relevant procedure, which involves a vote by Member States in the Standing Committee and eventually an adoption by the Commission. The decision-making process is therefore fully open and ongoing.

The information on the comments and positions of Member States on the draft Commission Implementing Regulation renewing the approval of the active substance glyphosate has been gathered in the framework of the Standing Committee.

The Standard Rules of Procedures for the standing Committees<sup>2</sup>, which the Commission adopted pursuant to Article 9 of Regulation (EC) No 182/2001<sup>3</sup>, explicitly exclude the positions of individual Member States from public access. In fact, Articles 10(2) and 13(2) of the Standard Rules of Procedure affirm, respectively, that summary records of the meetings shall not mention the position of individual Member States in the committee's discussions and that the committee's discussions shall be confidential.

It follows that the Commission cannot grant public access under Regulation (EC) No 1049/2001<sup>4</sup> to documents containing the positions and comments of individual Member States, as this would result in the above-mentioned confidentiality requirement being deprived of its meaningful effect.

In its *Corporate Europe Observatory* judgment<sup>5</sup>, the General Court confirmed that minutes circulated to participants in the framework of a meeting which was not open to the public, are to be considered as "*internal documents*" within the meaning of Article 4(3) of Regulation (EC) No 1049/2001 and deserve protection on that basis. The same reasoning applies, *a fortiori*, to the positions of Member States expressed in the framework of and in the follow-up of standing Committees' meetings.

In fact, the Member States and the Commission must be free to explore all possible options in preparation of a decision within Standing Committees free from external pressure. Public disclosure of the positions of individual Member States would prevent Member States from frankly expressing their views in the framework of Standing Committees meetings and thus seriously undermining the possibility of the Commission to explore all possible options in preparation of a decision and impairing the quality of

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<sup>2</sup> OJ C 206, 12.7.2011, p. 11.

<sup>3</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13.

<sup>4</sup> 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, OJ L 145, 31.05.2001, p. 43.

<sup>5</sup> Judgment of the General Court of 7 June 2013 in case T-93/11, *Stichting Corporate Europe Observatory v European Commission*, paras 32-33.

the decision-making process. Therefore, public access to positions/opinions of individual Member States would seriously undermine the ongoing decision-making process on glyphosate. The exception laid down in Article 4(3), first paragraph, of Regulation (EC) No 1049/2001 applies to all documents containing the position and comments of individual Member States on the draft Commission Implementing Regulation renewing the approval of the active substance glyphosate.

#### **4. Overriding public interest**

The exceptions to the right of access provided for in Article 4(2) and 4(3) 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 decision-making process.

#### **5. Means of redress**

Should 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.

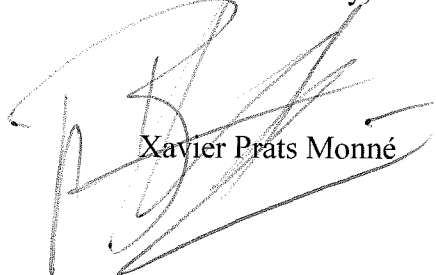
The Secretary-General will inform you of the result of such review within 15 working days from the date of registration of your request. You will either be given access to the document or your request will be rejected, in which case you will be informed of what further action is open to you.

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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Xavier Prats Monné