

EUROPEAN COMMISSION  
Directorate-General for Trade

The Director General

Brussels, **23 DEC. 2016**  
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***By registered letter with acknowledgment of receipt***

Mr Thibault Devoldere  
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Belgium

***Advance copy by email:*** [ask+request-3542-b31bab6a@asktheeu.org](mailto:ask+request-3542-b31bab6a@asktheeu.org)

**Subject: Your application for access to documents – Ref. GestDem No 2016/6180**

Dear Mr Devoldere,

We refer to your e-mail dated 1<sup>st</sup> November 2016, in which you make a request for access to documents in accordance with Regulation (EC) No 1049/2001<sup>1</sup> ("Regulation 1049/2001"), registered on 3 November 2016 under the above mentioned reference number.

**1. SCOPE OF YOUR REQUEST**

We understand from your request that you would like to have access to the following documents:

- *All correspondence (including emails), agendas, minutes of meetings and any other reports of such meetings between officials of DG Trade (including the Commissioner and his/her Cabinet) and representatives of NGOs, companies, business associations and law firms with whom environmental and food safety standards were discussed in relation to TTIP (The Transatlantic Trade and Investment Partnership), within the time frame January 2012 until December 2013. In the meaning of your request, environmental and food safety standards include,*

<sup>1</sup> 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.

*but are not limited to growth hormones on livestock farming, pesticide residues, chlorine-washed chicken, GMOs.*

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- All documents held by DG TRADE (including minutes/memos/notes/reports for internal use) and all correspondences (including emails) relating discussions within the World Trade Organization (WTO) on maximum residue levels (MRLs) and/or crop protection product residues in general within the time frame January 2012 till November 2016.*
- All correspondence (including emails), agendas, minutes of meetings and any other reports of such meetings between officials of DG Trade (including the Commissioner and his/her Cabinet) where maximum residue levels (MRLs) and/or crop protection product residues in general were discussed within the time frame January 2012 till November 2016.*

In accordance with Article 6(3) of Regulation 1049/2001 concerning the possibility for the institution receiving a request for access to documents to reach a “fair solution” with the applicant, you agreed on 9 November to receive the documents in successive batches.

This letter addresses the second and third bullet points of your request. It also addresses the first part of your request as far as GMOs are concerned. We will deal with the other points of your request in later batches.

Please note that no documents were found that would fall under the point of your request concerning documents held by DG TRADE (including minutes/memos/notes/reports for internal use) and correspondences (including emails) relating to discussions within the World Trade Organization (WTO) on maximum residue levels (MRLs) and/or crop protection product residues in general.

As regards the remaining points, we have identified the following 12 documents:

- (1) the report of a meeting between DTB Associates, Bayer and DG TRADE on 26 May 2016 – Ares(2016)2470055;
- (2) the report of a meeting between ECPA and DG TRADE on 28 April 2015 – Ares(2015)2559996;
- (3) a letter from DG TRADE to ECPA dated 22 May 2015 – Ares(2015)2156027;
- (4) a letter from DG SANTE to DOW AgroSciences dated 17 May 2016 – Ares(2016)2287572;
- (5) an e-mail from FoodDrinkEurope to DG TRADE dated 10 September 2015 – Ares(2015)3744759;
- (6) a letter from DOW AgroSciences to DG TRADE dated 1 March 2016 – Ares(2016)6786887;

- (7) a letter from Almond Board of California to DG TRADE and DG SANTE dated 2 July 2015 – Ares(2015)2827752;
- (8) an e-mail from Caobisco to DG TRADE dated 28 July 2015 – Ares(2015)3399376;
- (9) a letter from AAF to Commissioner De Gucht dated 1 October 2013 – Ares(2013)3154866;
- (10) a presentation by COPA-COGECA dated 30 April 2013 – Ares(2013)2034028;
- (11) a letter from the Institute for Agriculture and Trade Policy to Commissioner De Gucht dated 24 June 2013 – Ares(2013)2483737;
- (12) an e-mail from CEFS to DG TRADE dated 4 June 2013 – Ares(2013)1699600.

Please note that we have not considered in our search correspondence in which DG TRADE was merely copied for information.

## 2. EXAMINATION AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law,<sup>2</sup> 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*”.<sup>3</sup>

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents,<sup>4</sup> “*the exceptions to that right [...] must be interpreted and applied strictly*”.<sup>5</sup>

Having carefully examined the documents identified above in light of the applicable legal framework, I am pleased to **release all the documents identified above.**

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<sup>2</sup> 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.

<sup>3</sup> *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.

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

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

Documents 10 and 11 are fully disclosed. As regards documents 1, 3 to 8 and 12, only names and other personal data have been removed pursuant to Article 4.1(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001 ("Regulation 45/2001").<sup>6</sup> Hence, the main content of these documents is accessible. As regards documents 2 and 9, in addition to personal data, other information was removed, respectively, pursuant to Article 4.1(a) third indent concerning the protection of the public interest as regards international relations, and Article 4(2) first indent concerning the protection of the commercial interests of a natural or legal person.

Please note that parts of documents 9 and 12 fall outside the scope of your request as they concern subject matters other than those mentioned in your request.

We enclose for ease of reference a list of the above documents in **Annex I**. For each of them, the list provides a description (e.g. date, type of document) and indicates whether parts are withheld and if so, under which ground pursuant to Regulation 1049/2001. Copies of the accessible documents are enclosed.

### **2.1. Protection of the public interest as regards 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".<sup>7</sup> 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".<sup>8</sup> 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."<sup>9</sup>

Document 2 is the report of a meeting with the European Crop Protection Association (ECPA) on 28 April 2015. Three sentences in the last bullet point have been withheld as they contain opinions and views of individual staff members in relation to the objectives

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<sup>6</sup> 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.

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

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

<sup>9</sup> *Id.*, paragraph 126.

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 negotiations as well as lead the EU's negotiating partners to potential misleading conclusions. Furthermore, the disclosure of the position of relevant counterparts in the negotiations would undermine in a reasonably foreseeable manner the climate of confidence and trust between the EU and its negotiating partners.

## **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”.<sup>10</sup>

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’”<sup>11</sup> and that “surnames and forenames may be regarded as personal data”,<sup>12</sup> including names of the staff of the institutions.<sup>13</sup>

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”.<sup>14</sup>

Documents 1 to 9 and 12, all contain names and other personal information that allows the identification of natural persons.

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<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> Judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 68.

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

<sup>14</sup> Judgment in C-127/13 P *Guido Strack v Commission*, EU:C:2014:2250, paragraph 107 and judgment in C-28/08 P *Commission v Bavarian Lager*, EU:C:2010:378, paragraph 77.

I note that 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 undisclosed in order to ensure the protection of the privacy and integrity of the individuals concerned.

However, names of senior managers of the Commission at Director level or above, and names of senior managers of private entities (e.g. Director, Vice-President) are disclosed.

If you wish to receive the undisclosed personal data, we invite you to provide us with arguments showing the need for having them transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

### **2.3. Protection of the commercial interests of a legal person**

Article 4.2 first indent, of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] commercial interests of a natural or legal person, including intellectual property [...] unless there is an overriding public interest in disclosure”.

Certain parts of document 9 contain commercially sensitive economic data, such as production costs and prices. Upon consultation in accordance with Article 4(4) of Regulation 1049/2001, the originator of document 9 opposed the disclosure of the data in question on the ground that these are owned by a third party company active in the production and sale of market data. That company authorised the author of the document to share certain data with the Commission but not with the wider public. Disclosing the information would prejudice the legitimate commercial interests of the company owning the data, including its intellectual property.

### **3. OVERRIDING PUBLIC INTEREST**

The exception laid down in Article 4.2 of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. Such an interest must, first, be public and, secondly, outweigh the harm caused by disclosure. Accordingly, we have also considered whether the risks attached to the release of the withheld parts of document 9 are outweighed by the public interest in accessing the requested document. We have not been able to identify any such public interest capable of overriding the legitimate commercial interests of the company concerned.

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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.

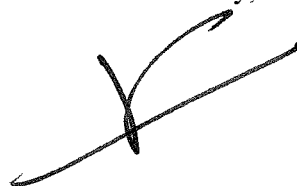
Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

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European Commission  
Secretary-General  
Transparency unit SG-B4  
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,

A handwritten signature in black ink, consisting of a stylized 'J' and 'L' followed by a horizontal line.

Jean-Luc DEMARTY

Encl.:

- Annex I: List of documents
- Released documents

## Request GestDem 2016-6180

| Doc Nr. | ARES number       | Document or meeting date | Interlocutor   | Release: Yes/ No/ Partial | Justification (*):   | Annexes                     |
|---------|-------------------|--------------------------|--|---------------------------|--|-----------------------------|
| 1       | Ares(2016)2470055 | 26/05/2016               | DTB associates, consulting, Bayer                                    | Partial                   | Art. 4.1 (b)   | 0                           |
| 2       | Ares(2015)2559996 | 28/04/2015               | ECPA   | Partial                   | Art. 4.1 (a) third indent; 4.1(b)  | 1                           |
| 3       | Ares(2015)2156027 | 22/05/2015               | ECPA   | Partial                   | Art. 4.1 (b)   | 0                           |
| 4       | Ares(2016)2287572 | 17/05/2016               | DOW Agro Sciences  | Partial                   | Art. 4.1 (b)   | 0                           |
| 5       | Ares(2015)3744759 | 10/09/2015               | FoodDrinkEurope  | Partial                   | Art. 4.1 (b)   | 1                           |
| 6       | Ares(2016)6786887 | 01/03/2016               | DOW Agro Sciences  | Partial                   | Art. 4.1 (b)   | 0                           |
| 7       | Ares(2015)2827752 | 02/07/2015               | Almond Board of California   | Partial                   | Art. 4.1 (b)   | 1                           |
| 8       | Ares(2015)3399376 | 28/07/2015               | CAOBISCO   | Partial                   | Art. 4.1 (b)   | 1<br>(n° Ares(2015)2250579) |
| 9       | Ares(2013)3154866 | 01/10/2013               | AAF (Association des Amidonniers et Féculiers)                       | Partial                   | Art. 4.1(b); Art. 4.2; some parts fall outside the scope of the request. | 1                           |
| 10      | Ares(2013)2034028 | 30/04/2013               | COPA-COGECA  | Yes                       |  | 0                           |
| 11      | Ares(2013)2483737 | 24/06/2013               | Institute for Agriculture and Trade Policy (and other organisations) | Yes                       |  | 0                           |
| 12      | Ares(2013)1699600 | 04/06/2013               | CEFS (Comité Européen des Fabricants de Sucre)                       | Partial                   | Art. 4.1(b); some parts fall outside the scope of the request.           | 2                           |

\* under Regulation 1049/2001