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

Dear Mr Devoldere,

I refer your email of 1st November 2016 in which you make a request for access to documents in accordance with Regulation (EC) No 1049/20011 (“Regulation 1049/2001”), registered on 3 November under the above mentioned reference number.

In particular, you would like to receive access to:

- "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). Environmental and food safety standards include, but are not limited to, rules on the use of growth hormones in livestock farming; on pesticide residues; on chlorine-washed chicken; on endocrine disrupting chemicals; on tar sand oil, and on genetic engineering (GMOs);

- 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;
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".

You specified in your email that you are "requesting all documents within the time frame January 2012 till November 2016" and that you would prefer to receive the documents "on a rolling basis, rather than waiting until the full response is ready".

In accordance with Article 6(2) of Regulation 1049/2001 concerning the possibility for an institution which is the addressee of 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 and to reduce the time frame for the documents requested under the first bullet point to the period from January 2012 until December 2013.

On 29 November 2016 we provided you with a reply covering the first bullet point of your request in relation to tar sand oil (Ares(2016)6673301).

On 23 December 2016 we provided you with a reply covering the first bullet point of your request in relation to pesticide residues and GMOs, as well as the second and third bullet points of your request (Ares2017)300771).

The present letter addresses the first bullet point of your application as far as the topics of “growth hormones in livestock farming” and “chlorine-washed chicken” are concerned.

In particular, we have identified the following documents:

(1) an e-mail containing the report of a meeting between the European Livestock and Meat Trading Union (“UECVB”) and DG TRADE, which took place on 14 June 2013 (Ares(2013)2484816) (“document 1”);

(2) an e-mail dated 20 September 2013 containing the report of a meeting between COPA-COGECA and DG TRADE (Ares(2013)3115628) (“document 2”);

(3) a letter from Friends of the Earth to DG TRADE dated 13 November 2013 (Ares(2013)3115628), enclosing a position paper on TTIP and a briefing concerning the inclusion of ISDS in TTIP (“document 3”).


2 DG TRADE will provide the documents that fall under the remaining parts of your request in a subsequent reply.

(4) a submission to a public consultation from the Confederation of British Industry (CBI) dated 28 January 2013 (Ares(2013)99285) (“document 4”);

(5) a letter from Zentralverband der Deutschen Geflügelwirtschaft e.V., dated 30 August 2013 (Ares(2013)2948968) (“document 5”);

(6) an email containing a letter to former Commissioner De Gucht and Ambassador Froman from US and EU civil society organisations on the potential impacts of TTIP on food systems in both regions (Ares(2013)2483737) (“document 6”).

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

We enclose for ease of reference a list of these 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. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law, 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".

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

Having carefully examined the documents identified above in light of the applicable legal framework, I am pleased to inform you that full access is granted to document 4 and the annexes to document 3, while partial access is granted to the remaining documents.

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5 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.


In particular as regards documents 2, 5, 6 and cover letter in document 3, only personal data have been redacted, pursuant to Article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 45/2001 ("Regulation 45/2001")\(^8\). Hence, the main content of these documents is accessible.

In document 1, in addition to personal data protected under Article 4(1)(b) of Regulation 1049/2001, additional information was redacted in accordance with Article 4(2) first indent of Regulation 1049/2001 (protection of commercial interest of a natural or legal person). Moreover, parts of document 1 have been marked as “out of scope of the request” as they concern subject-matters other than TTIP.

The reasons justifying the application of the abovementioned exceptions are set out below in Sections 2.1 and 2.2. Section 3 provides an assessment of whether there exists an overriding public interest in the disclosure of certain parts of document 1.

### 2.1 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"\(^9\).

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'\(^10\) and that "surnames and forenames may be regarded as personal data"\(^11\), including names of the staff of the institutions\(^12\).

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

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10 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.
prejudiced”. The Court of Justice has clarified that "it is for the person applying for access to establish the necessity of transferring that data”.

Documents 1, 2, 5, 6 and the cover letter in document 3 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 undisclosed. However, names of senior managers of the Commission at Director level or above, and names of senior managers of private entities (e.g. CEO, Director) are disclosed.

2.2 Protection of commercial interests

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”.

While not all information concerning a company and its business relations can be regarded as falling under the exception of Article 4(2) first indent, it appears that the type of information covered by the notion of commercial interests would generally be of the kind protected under the obligation of professional secrecy. Accordingly, it must be information that is "known only to a limited number of persons", "whose disclosure is liable to cause serious harm to the person who has provided it or to third parties" and for which "the interests liable to be harmed by disclosure must, objectively, be worthy of protection”.

Document 1 is a report of a meeting held by DG TRADE with representatives of companies that are members of the UECBV at national level. It contains views, concerns and interests by certain companies and industry associations in relation to investment and regulatory issues in third countries, and their assessment of commercial priorities, strategies and concerns in relation to the TTIP negotiations. These were shared with the Commission in confidence in order to provide useful input and support for the EU’s objectives in the TTIP negotiations.

In order to ensure a high degree of transparency while preserving the commercial interests of the entities involved, only the identity of the representatives participating in

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13 *Id*, paragraph 107; see also judgment in *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 77.
15 See Article 339 of the Treaty on the Functioning of the European Union.
the meeting were redacted. In particular, the disclosure of their identities in relation to
specific comments they made at the meeting would undermine the commercial interests
of the entities involved by exposing their specific interests and positions in relation to the
TTIP negotiations. There exists a reasonably foreseeable and not purely hypothetical risk
that this information be exploited by competitors to their advantage and be used to
undermine the commercial positions of the companies and entities concerned.

3. **OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exception laid down in Article 4(2) first indent 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 1 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 commercial interests of the stakeholders concerned. The public interest
in this specific case rather lies on the protection of the legitimate confidentiality interests
of the stakeholders concerned to ensure that the Commission continues to receive useful
contributions for its ongoing negotiations with third countries without undermining the
commercial position of the entities involved.

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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:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Bruxelles
or by e-mail to: sg-acc-xxx@xx.xxxxxx.xx

Yours sincerely,

Jean-Luc DEMARTY

Enclosures:

- Annex I: list of documents
- Released documents