



EUROPEAN COMMISSION
Secretariat-General

Directorate E - Policy Co-ordination II
The Director

Brussels, 04.04.2017
WS/ALB/lb

**By registered mail with
acknowledgment of receipt**

Nina Holland
Corporate Europe Observatory
Rue d'Edimbourg 26
1050 Brussels
Belgium

Advance copy by e-mail: ask+request-4310-
81bb9554@asktheeu.org

Dear Madam,

Subject: Your application for access to documents – Ref GestDem No 2017/2968

We refer to your e-mail dated 18/05/2017 in which you make a request for access to documents, registered on 18/05/2017 under the above mentioned reference number.

1. Scope of your request

You request the following documents: *"Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information: 1. Any documents between January 2016 and now, including briefings, reports, correspondence (email or other), where the active substance glyphosate is concerned or mentioned, between the Secretariat-General (Secretary-General and officials) and officials/representatives of:*

- *Monsanto or any other company producing glyphosate, such as: ADAMA Agan Ltd., Agria S.A., Agro Trade GmbH, Albaugh UK Limited, Arysta Lifesciences SAS, Barclay Chemicals (Manufacturing) Ltd., Brokden SL, BROS Spółka z ograniczoną odpowiedzialnością spółka komandytowa, Cheminova A/S, Coromandel International Ltd, EXCEL CROP CARE(Europe) NV, Helm AG, Industrias Afrasa S.A., Monsanto Europe S.A./N.V., Nufarm GmbH & Co KG, Rotam Agrochemical Europe Limited, Sapec Agro S.A., Sinon Corporation, Société Financière de Pontarlier, Syngenta Limited, United Phosphorus Ltd, Wynca UK Limited.*
- *the Glyphosate Task Force*
- *Hume Brophy or any other organisations representing industry with an interest in glyphosate*
- *European Crop Protection Association (ECPA)*
- *the US government and administration including agencies such as the EPA and the FDA*
- *representatives of the German administration and government*

- representatives of the German Federal Institute for Risk Assessment BfR
- representatives of DG Trade (Commissioner, cabinet and officials)
- representatives of DG GROW (Commissioner, cabinet and officials)
- representatives of DG Competition (Commissioner, cabinet and officials)
- First Vice-President Frans Timmermans and cabinet
- Commission President Jean Claude Juncker and cabinet
- European Commission's Legal Service

2. A list of meetings, as well as agendas and minutes or any other reports of such meetings, also between January 2016 and now, where the active substance glyphosate is concerned or mentioned, between the Secretariat-General (Secretary-General and officials) and officials/representatives of the entities mentioned in the list under 1. I kindly urge you to not apply a rigid interpretation of the clause on commercial secrets. Should this request be denied wholly or partially, please explain the denial or all deletions referring to specific exemptions in the regulation."

2. Identification and assessment of the concerned documents

The following documents have been identified as relevant to your enquiry:

- 1) Email on the registration of ECI "Ban glyphosate and protect people and the environment from toxic pesticides", 25 January 2017, Ares(2017)3236977.
- 2) Note to the Legal service on a request for registration of a proposed citizens' initiative, 30 November 2016, Ares(2016)6742009.
- 3) Email on a briefing for ECI Day, 6 April 2017, Ares(2017)323603.
- 4) Email from Secretariat-General to President's and Timmermans's Cabinets on glyphosate, 24 June 2016, Ares(2017)3351052.
- 5) Email from Secretariat-General to President's Cabinet on glyphosate, 6 June 2016, Ares(2017)3350929.
- 6) Email from Secretariat-General to President's Cabinet on glyphosate, 7 March 2016, Ares(2017)3350210.
- 7) Email from Secretariat-General to President's Cabinet on glyphosate, 8 March 2016, Ares(2017)3350310.
- 8) Email from Secretariat-General to President's and Timmermans's Cabinets on glyphosate, 14 April 2016, Ares(2017)3350457.

3. Out of scope

Document 3 contains information on other topics unrelated to glyphosate. These parts of the document have been redacted as they concern information that falls outside the scope of the request.

4. Reasons for refusal

The decision on the re-approval of glyphosate was postponed in order to wait for the opinion of the Committee for Risk Assessment (RAC) of the European Chemicals Agency (ECHA). This opinion was published on 15 June 2017 whereby the Commission has six months to take a decision on the re-approval of the active substance. The decision-making process is therefore currently fully open and ongoing.

Documents containing information regarding the opinions and positions of specific Member States regarding the re-approval of glyphosate are protected. This information has been gathered in the framework of the Standing Committees, where the active substance glyphosate

has been discussed on numerous occasions. More specifically, the documents protected for this reason are the redacted parts of documents numbered 4, 5, 6, 7, 8.

The Standard Rules of Procedures for the Standing Committees¹, which the Commission adopted pursuant to Article 9 of Regulation (EC) No 182/2001², 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 1049/2001³ to documents containing references to the individual Member States that expressed opinion in the framework of committee meetings, as this would result in the above-mentioned confidentiality requirement being deprived of its meaningful effect.

In its *Corporate Europe Observatory* judgment⁴, 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 Standing Committees' meetings and consequently referred to in documents such as minutes of other meetings or briefings.

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 references to individual Member States would prevent Member States from frankly expressing their views in the framework of Standing Committees meetings and thus seriously undermine the possibility of the Commission to explore all possible options in preparation of a decision and impairing the quality of the decision-making process. Therefore, public access to references to individual Member States would seriously undermine the ongoing decision-making process on glyphosate.

We have considered whether partial access can be granted to the documents and have come to the conclusion that partial access can be granted to documents 4, 5, 6, 7, 8, the exception laid down in Article 4(3), first paragraph, of Regulation (EC) No 1049/2001 applies to the redacted parts of the documents that are not out of scope.

5. Overriding public interest

The exceptions to the right of access provided for in Article 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.

¹ OJ C 206, 12.7.2011, p. 11.

² 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.

³ 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.

⁴ Judgment of the General Court of 7 June 2013 in case T-93/11, *Stichting Corporate Europe Observatory v European Commission*, paras 32-33.

6. Protection of personal data

The documents to which you have requested access contain personal data. Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its 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 applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and 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 data⁵.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable⁶.

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 to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

7. Means of redress

In case you disagree with this assessment, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, 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 email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



William SLEATH
Director

Enclosures

⁵ Official Journal L 8 of 12.1.2001, p. 1

⁶ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.