



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Food and feed safety, innovation
Pesticides and biocides

Brussel,
SANTE/E4/DI/gb(2019)6246352

***By registered letter with
acknowledgement of receipt***

SumOfUs c/o David Norton
Keltan House, 115 Mare Street
London E8 4RU
United Kingdom

Advance copy by email:
ask+request-7214-99339a1b@asktheeu.org

Dear Mr Norton,

Subject: Your application for access to documents – Ref GestDem No 2019/4848

We refer to your email dated 14 August 2019 in which you make a request for access to documents on the basis of Regulation (EC) No 1049/2001¹, registered on the same date under the above-mentioned reference number.

1. Scope of your request

In your request, you asked access on the basis of Regulation (EC) No 1049/2001 to documents, which contain the following information:

- ‘- Correspondence, including emails, between officials and industry representatives working on the assessments and/or renewals of Thiacloprid and/or Chlorpyrifos during the year 2019.
- This includes (but is not limited to) correspondence between industry representatives or lobbyists and any members or representatives of SCoPAFF during this period that mentions or pertains to Thiacloprid or Chlorpyrifos during the year 2019.
- Please specifically include all correspondence between the following representatives and lobbyists of Bayer/Monsanto or Corteva/Dow/DuPont and EU officials or representatives involved in the assessment and/or renewal of Thiacloprid or Chlorpyrifos, including any members or representatives of SCoPAFF, which mentions or pertains to Thiacloprid or Chlorpyrifos, during the year 2019.
- Please also include all agendas or minutes of meetings with these parties during the year 2019 that mentions or pertains to the assessments or renewals of Thiacloprid or Chlorpyrifos:

DOW Europe
Mr Dennis Kredler, Director European Union Affairs and Head of Brussels office

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

Mr Howard Chase, Director of Government Affairs EMEA

Corteva Agriscience

Mr Teslenko Igor, President Europe

Mr George Macy Merriman, Government and Industry Affairs Lead, EMEA

DuPont de Nemours International

Mr Pierrick Le Gallo, President DuPont Europe, Middle East & Africa

Ms Agnese Danelon, Government Affairs & Industry Relations

Monsanto

Mr Jonathan Ramsay

Government and Industry Affairs Lead

BAYER

Mr Volker Koch-Achelpöhler

People authorised for EU access at Bayer:

Hannah HERSCHEID

Andrea Mertens

Raquel RESENDES

Lucia SEGURINI

Simon TERWAGNE

DTB Associates LLP

Mr Craig Thorn

Mr Paul Drazek

EPPA SA

Alexandra BOCQUILLION

Camille DEHESTRU

Pavel GLUKHOV

Pascal MICHAUX

Meglana Tontcheva MIHOVA

Eduardo Mulas Fernandez

Morten Bjarne PETERSEN

Adam SEBESTA

Sharon SPOONER

Thomas TUGLER

Zornitza TZVETKOVA

Jacobo Truan Aguirre

Julius Deodatus David WALLER

Fleishman-Hillard (representing Monsanto)'

2. Assessment of the documents

We have identified 9 documents as falling under the scope of your request.

Some of the documents originate from a third party and the originator of the documents has been consulted in accordance with Regulation (EC) No 1049/2001, in order to assess whether an exception to the right of access to documents is applicable.

Having examined the documents and considered the opinion of the third party, we have come to the conclusion that partial access due to the protection of personal data can be granted to all 9 documents.

The documents that can be partially released and the list of documents containing the result of the assessment carried out on its content on the basis of Regulation (EC) No 1049/2001 are published on the following Commission webpage:

<https://webgate.ec.europa.eu/dyna/extdoc>

You can view these documents by entering the GestDem reference of your request ("2019/4848") in the search box at the top of the page.

Alternatively, you can click on "view documents per request" and search on the left column for the GestDem reference of your request ("2019/4848").

The above-mentioned page has been recently launched by DG SANTE as part of a pilot scheme to make documents publicly available following an access to documents request.

You may re-use Commission documents free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Documents originating from third parties cannot be re-used without the agreement of the originators.

Please note that some of these documents are preliminary drafts which do not reflect the position of the Commission and cannot be quoted as such.

Furthermore, please note that document No 3 in the table of identified documents was drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Health and Food Safety. It solely reflects the services' interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which was not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

3. Protection of personal data

Documents numbered 1-9 contain personal data, such as the names, email addresses and telephone numbers of staff of the European Commission, Member State competent authorities or a concerned company.

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 EU legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EC) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC² ('Regulation 2018/1725').

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of

² Official Journal L 205 of 21.11.2018, p. 39.

Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.³

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned. Therefore, partial access is granted to the requested document, expunged of personal data.

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, ECLI:EU:C:2017:994, paragraphs 33-35.

⁴ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd.*, EU:C:2010:378, paragraph 59.

⁵ Whereas this judgment specifically related to 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 data, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

4. Overriding public interest in disclosure

Please note that Article 4(1)(b) of Regulation 1049/2001 is an absolute exception which does not require the institution to balance the exception defined therein against a possible public interest in disclosure.

5. Means of redress

In accordance with Article 7(2) of Regulation (EC) No 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
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Klaus Berend
Head of Unit