



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,
SANTE E3/LV/aj (2016) 6208650

***By registered letter with
acknowledgment of receipt***

Advance copy by e-mail to

ask+request-3251-cde25075@asktheeu.org

ask+request-3252-0e78b14c@asktheeu.org

Dear Mr Pavlou,

Subject: Your applications for access to documents - Ref GestDem No 2016/4842 and 2016/4845

We refer to your e-mails dated 1 September 2016 in which you made two requests for access to documents, registered on the same day under the above mentioned reference numbers.

You requested access to:

- *"The documents which were referred to in the letter sent by the Directorate General for Health and Food Safety to the European Food Safety Agency (Ref Ares (2016) 2701336 – 10/06/2016)";*
- *"Any minutes of meetings, analyses and reports (produced and/or received by EU bodies), emails and/or other communications related to the presence of teosinte (Zea mays spp) in Spain and in the European Union."*

We have identified 65 documents falling under the scope of your request, including attachments to main documents. They are listed in Annex A to this letter.

Having examined these documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that 34 of them can be disclosed fully, 29 partially, and that access to 2 of them must be refused.

Protection of personal data

All the documents to which partial access is granted have been expunged from personal data. These documents are identified in Annex A to this letter.

Mr Andreas Pavlou
Calle Cava de San Miguel 8, 4c
28005 Madrid
Spain

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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable².

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 that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

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

Protection of the decision-making process – Documents No 14, 16, 17 and 22

We would first like to point out that a decision-making process for the authorisations for cultivation of maize MON810, Bt11 and 1507 is on-going. The representatives of the Member States held a first exchange of views on the draft authorisations on 8 July 2016 in the competent Standing Committee. No vote has taken place.

1. Document No 14 consists in an e-mail from the Commission to the French authorities and in the reply of latter: this document is disclosed partially (the Commission's e-mail in this document is disclosed). Document 17 is an e-mail from the French authorities to the Commission: access to this document is entirely refused.

In accordance with Article 4, paragraphs 4 and 5, of Regulation (EC) No 1049/2001, we have consulted the French authorities on the disclosure of the e-mails emanating from them.

The French authorities objected to the disclosure of their abovementioned communications on the basis of Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001. They pointed out that these e-mails were sent as part of deliberations and preliminary consultations regarding teosinte, and that there is notably a link between teosinte and the ongoing process of authorisation for cultivation of 3 genetically modified maize (Bt11, 1507 and MON 810). They also underlined the acute sensitivity of the issue of genetically modified organisms in Member States in general and in France in particular. For these reasons, the French authorities consider that their disclosure would seriously undermine the Commission's decision-making processes regarding GMOs,

¹ OJ L 8 of 12.1.2001, p. 1.

² Judgment of the Court of Justice of the EU of 29 June 2010 in case C-28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

even after the process for the authorisation of the three abovementioned GM maize is completed.

2. Document No 16 is the reply of the Commission's Directorate-General for Environment (DG ENV) to the inter-service consultations that were carried out within the Commission regarding the authorisations for cultivation of 3 GM maize (Bt11, MON810 and 1507). Partial access is granted to this document.

Document No 22 is the reply of DG SANTE to the comments issued by DG ENV: the content of this reply is intrinsically linked to these comments. Access to this document is entirely refused.

Disclosing the abovementioned documents, or the relevant parts thereof where partial access is granted, would put into the public domain internal, preliminary views exchanged in the preparation of the abovementioned draft authorisations. It would thus unduly expose the Commission's internal deliberative process, including the disclosure of options which were considered but not retained in the texts submitted to the Standing Committee. This would severely reduce the Commission's room for manoeuvre in the on-going discussions in the Standing Committee and its ability to facilitate a compromise. Therefore, disclosure of these documents would seriously undermine the Commission's decision-making process regarding the 3 abovementioned authorisations, as referred to in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

3. We have considered whether partial access could be granted to the abovementioned documents. However, we have come to the conclusion that the 2 documents to which access is entirely refused (No 17 and 22) are entirely covered by the abovementioned exception to the right of access to documents.

4. The exceptions to the right of access provided for in Article 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding interest in disclosure. In our view, the public interest in making public the abovementioned documents does not outweigh the harm their disclosure would cause to the Commission's on-going decision-making processes regarding authorisations for the cultivation of the 3 GM maize concerned.

Confirmatory application

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 its 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-doc@ec.europa.eu

Final remarks

Please note that some of the documents disclosed emanate from third parties. They are disclosed for information only and cannot be re-used without the agreement of the originators, who hold a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

You may re-use the Commission documents disclosed free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the re-use.

Yours sincerely,

A handwritten signature in black ink, consisting of a series of connected, somewhat jagged lines that form a stylized representation of the name 'Xavier Prats Monné'.

Xavier Prats Monné

Annexes: – Annex A: Table listing the documents covered by the request;
 – 63 documents fully or partially disclosed