



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,  
SANTE/E4/AS/gb (2017)569571

**By registered mail with  
acknowledgment of receipt**

Mr Vincent Harmsen  
c/o Simon de Bergeyck  
Rue au Bois 216  
1150 Brussels  
Belgium

*Advance copy by e-mail:*

[ask+request-3671-ecd8e850@asktheeu.org](mailto:ask+request-3671-ecd8e850@asktheeu.org)  
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Dear Mr Harmsen,

**Subject: Your applications for access to documents – Ref GestDem No 2016/7243 and 2017/40**

We refer to your emails dated 22/12/2016 and 03/01/2017 in which you make the requests for access to documents, registered on 23/12/2016 and 03/01/2017 under the above mentioned reference numbers.

**1. Scope of your request**

As agreed to our proposal for a fair solution, the scope of the first batch of documents will consider the part of your request in which you asked access on the basis of Regulation (EC) No 1049/2001<sup>1</sup> to:

*all correspondence (including emails), agendas, minutes of meetings or any other reports of such meetings where the active substance glyphosate in relation to the re-approval of the active substance was discussed/mentioned/referred to by officials of DG SANTE and representatives/officials of the following organizations and services of the European Commission (between 1 March 2015 and May 27 2016):*

*ECPA, Cefic, CropLife America, ACC, AmCham, Bayer, Monsanto, BASF, Syngenta, Dow Chemicals, DuPont, BusinessEurope, CopaCogeca, Glyphosate Task Force, Hume Brophy, Fleishman-Hillard, Interel European Affairs, EPPA SA, European Forum for*

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

*Renewable Energy Sources, FTI Consulting Belgium, Grayling, Kream, Weber Shandwick, Acumen public affairs, Steptoe & Johnson LLP, Dr. Knoell Consult, or any consultancy representing the above mentioned parties*

## **2. Identification and assessment of the concerned documents**

We have identified 47 documents falling under the scope of your request. Having examined the documents, we have come to the conclusion that:

- i. partial access can be granted to the documents that are indicated with "Partial" in the list of documents;
- ii. the documents that are indicated with "No" in the list of documents are protected in their entirety.

Please find attached the documents that are indicated with "Partial" as well as a table with the list of documents containing the assessment carried out on their content on the basis of Regulation (EC) No 1049/2001.

You may re-use Commission documents 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. Documents originating from third parties cannot be re-used without the agreement of the originators.

## **3. Protection of personal data**

Document 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47 contains personal data, such as the names, signatures and telephone numbers of staff of the Commission, the EFSA, Monsanto, Glyphosate Task Force, Dow AgroSciences, Hume Brophy and Copa-Cogeca. 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 45/2001<sup>2</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable.<sup>3</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 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. Therefore, partial access is granted to the requested document, expunged of personal data.

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

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<sup>2</sup> 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 (OJ L 8, 12.1.2001, p. 1).

<sup>3</sup> 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.

adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to make a confirmatory application requesting the Commission to review this position.

#### **4. Reasons for refusal**

##### *Documents 20 and 23*

The documents 20 and 23 requested contain the draft Commission review report on the active substance glyphosate as well as comments on the review report.

These documents relate to a decision which has not yet been taken by the Commission. As the draft Commission review report is a key document in the decision-making process, the premature disclosure of the report as well as the comments on the report would seriously undermine the decision-making process of the Commission, as it would reveal preliminary views and policy options which are currently under consideration. The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure.

Therefore, the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 applies to these documents. We have considered whether partial access could be granted to the documents 20 and 23. However, these documents are entirely covered by the exception.

##### *Document 38*

Document 38 is the minutes of a meeting between Dow AgroSciences and DG SANTE officials on the topic of pesticides and genetically modified organisms (GMO). The document contains commercially sensitive business information relating to the activities of the company and its disclosure would provide information to competitors which may cause damages to the company. The document furthermore contains preliminary views of the Commission that refers to an ongoing decision-making process (market authorisations of GMOs).

We have considered and decided that partial access can be granted to the document, the exceptions laid down in Article 4(2), first indent, as well as Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 apply to the redacted parts of document 38.

#### **5. Overriding public interest**

The exceptions to the right of access provided for in Article 4(2) and 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.

## 6. Means of redress

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the address below.

The Secretary-General will inform you of the result of such review within 15 working days from the date of registration of your request. You will either be given access to the document or your request will be rejected, in which case you will be informed of what further action is open to you.

All correspondence should be sent to 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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

A handwritten signature in black ink, consisting of a series of connected, somewhat irregular strokes that form the name 'Xavier Prats Monné'.

Xavier Prats Monné