



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,
SANTE/E4/AS (2017)3507908

**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-4288-5da0b267@asktheeu.org
ask+request-4349-69ee327a@asktheeu.org

Dear Ms Holland,

**Subject: Your applications for access to documents – Ref GestDem Nos 2017/2964
and 2017/3173**

We refer to your emails dated 12/05/2017 and 30/05/2017 registered on 18/05/2017 and 31/05/2017 under the above mentioned reference numbers, by which you request access to documents on the basis of Regulation (EC) No 1049/2001¹.

In the letter to you registered as Ares(2017)2634038, DG SANTE proposed to you, as your request partly overlap in scope with two previous access to document requests (GestDem 2016/7243 and 2017/40), to not re-assess these documents and instead send you the complete replies which will cover the time period 1 January 2016 to 17 January 2017 for some of the organisations and stakeholders. You agreed to our proposal for a fair solution on 29 May 2017 and this reply concerns all documents not previously released. The released documents together with redacted cover letters protecting the personal data of the petitioner are annexed to this letter.

1. Scope of your request

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

“- Any documents between January 2016 and now, including briefings, reports, correspondence (email or other), where the active substance glyphosate is concerned or mentioned, between DG SANTE (Commissioner, cabinet and officials) and officials/representatives of:

- Monsanto or any other company producing glyphosate*
- Glyphosate Task Force*

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

- *Hume Brophy or any other firm representing industry with an interest in glyphosate*
 - *COPA-COGECA and its members*
 - *European Conservation Agriculture Federation*
 - *European Crop Protection Association (ECPA)*
 - *the US administration including agencies such as the EPA and the FDA*
 - *the German government*
 - *the German Federal Institute for Risk Assessment BfR*
 - *EFSA*
 - *ECHA*
 - *the British government and administration*
 - *the French government and administration*
 - *the Spanish government and administration*
 - *the Dutch government and administration*
 - *the Italian government and administration*
 - *the Slovakian government and administration*
 - *the Maltese government and administration*
 - *Croplife America*
 - *Croplife International*
- *Any documents between January 2017 and now, including briefings, reports, correspondence (email or other), where the active substance glyphosate in relation to the reapproval of the active substance is concerned or mentioned, between DG SANTE (Commissioner, cabinet and officials) and officials/representatives of the EEAS.*
- *A list of meetings, as well as agendas and minutes or any other reports of such meetings, between January 2016 and now, where the active substance glyphosate in relation to the re-approval of the active substance is concerned or mentioned, between DG SANTE (Commissioner, cabinet and officials) and officials/representatives of the entities mentioned in the list under 1 and 2.”*

2. Identification and assessment of the concerned documents

We have identified 41 documents falling under the scope of your request.

Since some of the requested documents originate from third parties, the originators of the documents have 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 opinions of these third parties, we have come to the conclusion that:

- i. full access can be granted to documents numbered 17 and 20. Document 17 is publicly available and indicated with “Public” in the list of documents. Full access is granted to document 20, indicated with “Yes” in the list of documents;
- ii. partial access can be granted to 37 documents that are indicated with “Partial” in the list of documents and numbered 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34;
- iii. documents 8 and 11 are protected in their entirety and indicated with “No” in the list.

You will find in annex to this letter all documents that are indicated with “Yes” and “Partial” as well as a table with the list of documents containing the result of 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.

Document 17 is now an adopted legal act, *Commission Implementing Regulation (EU) 2016/1056 of 29 June 2016 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval period of the active substance glyphosate*, and publicly available online.²

3. Out of scope

Documents numbered 4, 13, 22, 26, 33 and 34 contain information on other topics in the SANTE portfolio unrelated to the re-approval of glyphosate. These parts of the documents have been redacted as they concern information that falls outside the scope of the request.

4. Reasons for refusal

Documents with reference to the positions of Member States

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 (page 4), 12, 13 (page 2), and 22 (page 10).

The Standard Rules of Procedures for the Standing Committees³, which the Commission adopted pursuant to Article 9 of Regulation (EC) No 182/2001⁴, 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 1049/2001⁵ 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.

² See <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1497349519088&uri=CELEX:32016R1056>

³ OJ C 206, 12.7.2011, p. 11.

⁴ 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.

⁵ 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.

In its *Corporate Europe Observatory* judgment⁶, 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, 12, 13 and 22, 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.

Draft regulations on the re-approval of glyphosate

Documents numbered 8 and 11 are draft Annexes to a Commission Implementing Regulation and relate to a decision which has not yet been taken by the Commission. Having examined these documents, we regret to inform you that access cannot be granted. Documents 8 and 11 were submitted for discussion at the meeting of the Standing Committee on Plants, Animals, Food and Feed – Section “Plant Protection Products – Legislation”, held on 7 and 8 March 2016; no decision on their final content has been taken to date. Disclosure of these documents at this point in time would undermine the protection of 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. We have considered whether partial access can be granted to the documents. However, the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 applies to the two documents in their entirety.

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.

⁶ 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

Documents 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 as well as the cover letters of GestDem 2016/7243 and 2017/40 which are annexed to this letter contain personal data, such as the names, email-addresses, signatures and telephone numbers of staff of the Commission, EEAS, the Dutch and German authorities, Sinon, Adama, Albaugh, Barclay, Monsanto, Cheminova, Syngenta, ECAF, 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 45/2001⁷.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable.⁸ 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 documents, expunged of personal data.

7. 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

Yours sincerely,



Xavier Prats Monné

⁷ 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).

⁸ 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.