



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,
SANTE/E4/RC/od (2017)4890064

**By registered mail with
acknowledgment of receipt**

Vincent Harmsen
c/o Simon de Bergeyck
Rue au Bois 216
B-1150 Brussels

Advance copy by e-mail:
ask+request-4510-f6023b2d@asktheeu.org

Dear Mr Harmsen,

Subject: Your application for access to documents – Ref GestDem No 2017/4367

We refer to your e-mail dated 26/07/2017 registered on 26/07/2017 under the above mentioned reference number, by which you request access to documents on the basis of Regulation (EC) No 1049/2001¹.

1. Scope of your request

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

“all correspondence (including emails), agendas, minutes of meetings and any other reports of such meetings where the criteria for endocrine disruptors (also spelled: disrupters) were discussed/mentioned between DG SANTE officials and officials/representatives of (one or more of) the following DGs/organizations:

- Secretariat-General*
- DG AGRI*
- DG TRADE*
- United States Environmental Protection Agency (US EPA)*
- United States government*
- Canadian government*
- Brazilian government*
- Argentinian government*
- American Chamber of Commerce (AmCham)*
- CropLife America*
- CropLife International*
- American Chemistry Council (ACC)*
- European Crop Protection Association (ECPA)*

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

-European Chemical Industry Council (Cefic)
-Exponent
-Burson-Marsteller
-BASF
-Bayer
-Dow Chemical
-Monsanto
-Syngenta
-DuPont

(between 22 December 2016 and 26 July 2017).

When 'officials' are mentioned in this request this includes the Commissioners and their Cabinet members, as well as Commission President Jean-Claude Juncker and his Cabinet."

2. Identification and assessment of the concerned documents

We have identified 21 documents falling under the scope of your request. A table with the list of documents containing the assessment carried out on their content on the basis of Regulation (EC) No 1049/2001 is attached.

Having examined the documents, we have come to the conclusion that:

- i. full access can be granted to 1 document, indicated with "Yes" in the list of documents: the website on which the document can be found has been indicated in the table.
- ii. partial access can be granted to 17 documents that are indicated with "Partial" in the list of documents;
- iii. the documents that are indicated with "No" in the list of documents are protected in their entirety.

You will find attached the documents that are indicated with "Partial".

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

Documents 1, 2, 3, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18 and 20 contain personal data, such as the names, signatures and telephone numbers of staff of the Commission or organisations referred to in your request. 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 45/2001².

² 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).

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable.³ 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.

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

Out of scope

Document 4 and 19 are annexes to the reports of SPS expert group meetings between the Commission and EU Member States. During these meetings the EU position is coordinated for the upcoming WTO SPS Committee meetings. The annexes cover market access issues related to EU exports that are discussed during the bilateral meetings with third countries that take place in the margins of the WTO SPS Committees. These annexes do not contain information related to the criteria for endocrine disruptors. Documents 4 and 19 are therefore out of scope in their entirety.

Also, documents 3, 7, 8, 10, 11, 13, 14, 15, 16 and 18 contain some information unrelated to the criteria for endocrine disruptors. This information has therefore been redacted as it falls outside the scope of the request.

Ongoing decision making

Document 21 is a draft Commission Implementing Regulation amending Implementing Regulation (EU) No 844/2012.

This document relates to a decision which has not yet been taken by the Commission. In fact, it is the version of the draft Commission Implementing Regulation that has not been yet endorsed by the Commission as it is the version that was sent for interservice consultation. 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 this document. We have considered whether partial access could be granted to this document. However, this document is entirely covered by the exception at this stage.

In any case, once a stable version of the text is available, it would be subjected to the feedback mechanism and would therefore be available for the public to comment on this website: https://ec.europa.eu/info/law/better-regulation/have-your-say_en.

³ 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.

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. 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,

A handwritten signature in dark ink, appearing to read 'Xavier Prats Monné', with a long, sweeping horizontal stroke extending to the left.

Xavier Prats Monné