



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director General

Brussels,  
SANTE/E4/RC/od(2018)5094560

*By registered letter with  
acknowledgement of receipt*

Mr Vincent Harmsen  
Siriusstraat 200  
1622 ZN Hoorn  
The Netherlands

*Advance copy by email:  
ask+request-5778-  
3bbaad44@asktheeu.org*

Dear Mr Harmsen,

**Subject: Your application for access to documents – Ref. GestDem 2018/4140**

We refer to your email of 30 July 2018 in which you make a request for access to documents on the basis of Regulation (EC) No 1049/2001<sup>1</sup>, registered on the same date under the above-mentioned reference number.

We also refer to our letter of 7 August 2018 extending the time limit for responding to your application, pursuant to Article 7(3) of Regulation (EC) No 1049/2001.

**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), minutes of meetings and any other reports of such meetings, where the EU criteria for the identification of endocrine disruptors, or endocrine disrupting chemicals (EDCs) in general, were mentioned/discussed between officials of DG SANTE and officials/representatives of (one or more of) the following DGs/organizations:*

- Secretariat-General*
- DG AGRI*
- DG ENV*
- DG TRADE*
- DG GROWTH*
- United States Environmental Protection Agency (EPA)*
- United States government Canadian government*

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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).

- Brazilian government
- Argentinian government
- Uruguayan government
- American Chamber of Commerce
- CropLife America/International
- American Chemistry Council (ACC)
- European Crop Protection Association (ECPA)
- Cefic (European Chemical Industry Council)
- BusinessEurope
- Burson-Marsteller
- BASF
- Bayer
- Dow Chemicals
- DuPont
- DowDuPont (after merger)
- Syngenta

*between December 22th 2016 and July 28th 2018.”*

You also clarify that “*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*”.

On 26 July 2017, you made a request, registered under the reference number GestDem 2017/4367, in which you asked access 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)
- European Chemical Industry Council (Cefic)
- Exponent
- Burson-Marsteller
- BASF
- Bayer
- Dow Chemical
- Monsanto
- Syngenta
- DuPont

*(between 22 December 2016 and 26 July 2017)”.*

You also clarified that: *“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”.*

Considering that the part of your current request GestDem 2018/4140 regarding the period from 22 December 2016 until 26 July 2017 is (mostly) covered by your previous request GestDem 2017/4367, we would like to refer you to our reply to your request GestDem 2017/4367, dated 15 September 2017 and registered under reference number Ares(2017)4514557, for all correspondence on the criteria for endocrine disruptors in the period from 22 December 2016 until 26 July 2017.

In addition to the documents that were identified in our above-mentioned reply to your request GestDem 2017/4367, we have now identified a new document that concerns correspondence from a stakeholder that you listed for the first time in GestDem 2018/4140 (document No 1 in the list of documents concerned by GestDem 2018/4140). We have not identified any further documents covering the period from 22 December 2016 until 26 July 2017.

We would also like to inform you that document No 23, to which access was refused to you in GestDem 2017/4367, is now publicly available on the following website: <https://webgate.ec.europa.eu/dyna/extdoc/>. You can find this document by performing a search using “GestDem 2018/3889” as keyword.

The assessment of document No 10 (as identified in our reply to GestDem 2017/4367) to which partial access had been given to you has been reviewed in view of the new scope of your current request. It is now document No 2 in this reply.

For all the other documents identified in GestDem 2017/4367, no additional access can be granted because the assessment of the documents, as explained to you in our reply to GestDem 2017/4367, remains valid.

As mentioned earlier, despite the new wider scope of your request, no new documents were identified for the period from 22 December 2016 until 26 July 2017.

For these reasons, this reply to your request GestDem 2018/4140 will now focus on the correspondence exchanged and minutes of meetings in the period from 26 July 2017 to 28 July 2018.

In addition, we note that under GestDem 2018/4143, you have asked and obtained partial access to the minutes of all the meetings of the WTO SPS Committee that were held between 22 December 2016 and 28 July 2018. These are minutes of meetings where SANTE officials and representatives of the US, Argentina and a number of other countries discussed the endocrine disruptors’ criteria. We will therefore exclude these minutes from the scope of your request GestDem 2018/4140.

## **2. Assessment of the documents**

We have identified 13 documents as falling under the scope of your request.

Document No 1 originates from a third party and the originator of this document 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

- Full access can be granted to documents No 11 and 12.
- Partial access can be granted to documents No 1, 2, 4, 5, 6, 7, 8, 10 and 13.
- No access can be granted to documents No 3 and 9.

The documents that can be (partially) released and the list of documents containing the result of the assessment carried out on their 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 ("2018/4140") 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 ("2018/4140").

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. This page will be updated each time new documents will have been made public through the access to documents procedure.

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. They do not reflect the position of the Commission and cannot be quoted as such.

### **3. Reason for refusal**

*Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001*

Documents No 3 and 9 and parts of documents No 2, 5 and 7 relate to decisions which have not yet been taken by the Commission. Having examined these documents, we regret to inform you that access cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

(Parts) of documents No 2, 3, 5 and 7 are minutes of meetings where the outline and the content of the communication from the Commission to the Parliament and the Council on a "comprehensive framework" on endocrine disruptors were discussed among several services of the Commission (cabinets included). Document No 9 is the cover note for the interservice consultation on this communication. No decision on the final content of this communication has been taken to date. Disclosure of these documents at this 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. Therefore, the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 applies to documents No 2, 3, 5, 7 and 9.

We have considered whether partial access could be granted to documents No 3 and 9. However, these documents are fully covered by the exception.

*Out of scope*

Parts of documents No 2, 4 and 10 contain information that is not related to the endocrine disruptors criteria or to endocrine disrupting chemicals in general. Therefore, those parts of the documents have been redacted, as they fall outside the scope of your request.

### **4. Protection of personal data**

Documents No 1, 4, 5, 6, 7, 8, 10 and 13 contain personal data, such as the names of non-senior managerial Commission staff or of people working for private consultancies. 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 documents, expunged of personal data.

## **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.


## **6. 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  
Secretary General  
Transparency unit SG-B-4  
BERL 5/282  
B-1049 Brussels  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Xavier Prats Monné

<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.