



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels
TRADE/SW/E4 (2020) 8015501

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

Mr Vincent Harmsen
Drapeniersdonk 149
7326 AH Apeldoorn
The Netherlands

Advance copy by email:
ask+request-8545-4d28362f@asktheeu.org

Subject: Your application for access to documents – Ref GestDem 2020/5418

Dear Mr Harmsen,

I refer to your application dated 11 September 2020, in which you make a request for access to documents under Regulation (EC) No 1049/2001¹ ('Regulation 1049/2001'), registered on 15 September under the above mentioned reference number.

Please accept our apologies for the delay in preparing the reply to your request, which is mainly due to a high number of access to documents requests being processed at the same time by DG Trade.

1. SCOPE OF YOUR REQUEST

In your request, you asked for access to:

-all minutes of meetings, and/or any other reports of such meetings, of the SPS Committee of the World Trade Organization (WTO) (between July 28th 2018 and September 1st 2020);

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

-all minutes of meetings and/or any other reports of such meetings of the TBT Committee of the World Trade Organization (WTO) (between July 28th 2018 and September 1st 2020).

Your request focused specifically on, but was not exclusive to, minutes/reports of meetings where the EU criteria for the identification of endocrine disruptors, endocrine disrupting chemicals (EDCs) in general, the active substance glyphosate, formulated products containing glyphosate, (the setting of) maximum residue levels (MRLs) for pesticides, and/or the EU's hazard-based cut-off criteria relating to pesticides were mentioned/discussed.

On 6 October 2020 we informed you that, after having considered the scope of your request as described by you, your application appeared to concern a number of very long documents, which needed to be assessed individually. On the basis of Article 6(3) of Regulation (EC) No 1049/2001,² we kindly asked you to confirm that your interests concerned exclusively the documents or their parts related to: EU criteria for the identification of endocrine disruptors, endocrine disrupting chemicals (EDCs) in general, the active substance glyphosate, formulated products containing glyphosate, (the setting of) maximum residue levels (MRLs) for pesticides, and/or the EU's hazard-based cut-off criteria relating to pesticides. In case the scope of your request should have been enlarged, we asked you to specify in a detailed way any additional subject in your interest. We asked you for a reply within five working to our email of 6 October.

In the absence of a reply from you, on 16 October 2020, we informed you that, as announced in our email of 6 October, we had restricted the scope of your application to those parts that could be dealt with within the extended deadline of 30 working days from the date of registration of your application.

Consequently, your application is understood to cover the documents or their parts included in two categories indicated below:

-minutes of meetings, and/or any other reports of such meetings, of the SPS Committee of the World Trade Organization (WTO) (between July 28th 2018 and September 1st 2020);

-minutes of meetings and/or any other reports of such meetings of the TBT Committee of the World Trade Organization (WTO) (between July 28th 2018 and September 1st 2020).

and related exclusively to the following issues (mentioned by you previously in your request): *EU criteria for the identification of endocrine disruptors, endocrine disrupting chemicals (EDCs) in general, the active substance glyphosate, formulated products*

² Article 6(3) of Regulation (EC) No 1049/2001 provides for a possibility to confer with an applicant informally with a view to finding a fair solution when an application relates to a very long document or concerns a very large number of documents.

containing glyphosate, (the setting of) maximum residue levels (MRLs) for pesticides, and/or the EU's hazard-based cut-off criteria relating pesticides.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

In accordance with settled case law³, when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001. Such assessment is carried out in a multi-step approach:

- first, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception;
- second, it must examine whether disclosure of the parts of the document in question pose a '*reasonably foreseeable and not purely hypothetical*' risk of undermining the protection of the interest covered by the exception;
- third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Article 4(2) and Article 4(3) of Regulation 1049/2001, the institution is required '*to ascertain whether there is any overriding public interest justifying disclosure*'⁴.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents⁵, '*the exceptions to that right [...] must be interpreted and applied strictly*'⁶.

In reply to your request, I would like to inform you that, as far as the WTO SPS Committee is concerned, we have identified the same documents as DG SANTE who handled a similar application submitted by you and registered under GESTDEM 2020/5393. The reply to this request was sent to you on 27 October 2020 (Ares(2020)5994347)

For the part of your request concerning the WTO TBT Committee, we have identified **6 documents** that fall within the scope of your request. The identified documents are listed for ease of reference in Annex I. For each of the documents the Annex provides a description and indicates whether parts or entire documents are withheld and if so, on which grounds pursuant to Regulation 1049/2001. Copies of the accessible documents are enclosed to this letter.

Having examined the requested documents under the applicable legal framework, I am pleased to grant you access to **all identified documents**, where only names and other personal data have been redacted pursuant to article 4(1)(b) of Regulation 1049/2001 and

³ Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

⁴ *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52-64.

⁵ See Regulation 1049/2001, recital (4).

⁶ Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

in accordance with Regulation (EC) No 2018/1725. Hence, the main content of these documents relevant to your request is accessible. Please note that parts of the documents that do not relate to your request have been redacted as falling out of scope.

In addition, I refer you to the official WTO TBT and SPS Committee reports that are publicly available at the WTO website:

https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx

The reasons justifying the application of the above-mentioned exception are set out below in section 2.1.

2.1 Protection of the privacy and integrity of the individual

Pursuant to Article 4(1)(b) of Regulation 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 European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EC) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC⁷ ('Regulation 2018/1725').

All the documents identified as falling within the scope of your request contain personal information, such as names, e-mail addresses, and/ or telephone numbers that allow the identification of natural persons, as well as other personal information.

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data '*means any information relating to an identified or identifiable natural person [...]'*. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.⁸ Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.⁹

⁷ Official Journal L 205 of 21.11.2018, p. 39.

⁸ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

⁹ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, ECLI:EU:T:2018:560.

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹⁰, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.¹¹

Pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if *‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’*. Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

¹⁰ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

¹¹ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

However, in line with the Commission's commitment to ensure transparency and accountability, the names of the Members of Cabinet and the names of the senior management of the Commission are disclosed.

The documents were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Trade, the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs and the Directorate-General for Health and Food Safety. They solely reflect the services' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their contents. They do not necessarily reflect the position of the Commission and cannot be quoted as such.

3. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation 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:

Secretary-General
European Commission
Transparency, Document Management & Access to Documents
BERL 7/76
Rue de la Loi 200/Wetstraat 200
1049 Brussels
Belgium

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Sabine WEYAND

Enclosures: Annex I: List of documents
Documents released