



**Pesticide
Action
Network**
Europe

**PAN-Europe, Request for
access to documents**

Brussels, 15 September 2015

**Contact: Martin Dermine
Rue de la pépinière 1
1000 Brussels
Belgium
+32 2 503 31 37**

DG SANTE
Commissioner Andriukaitis
Brussels

SANTE-ACCESS-TO-DOCUMENTS@ec.europa.eu

Concerning: Request for access to documents

Dear Mr. Andriukaitis, Pesticide Action Network Europe (PAN-E) herewith requests access to all documents with regard to the confirmatory information for the pesticide Fipronil as required by Commission regulation 781/2013¹ and the confirmatory information for the pesticides Imidacloprid/Clothianidin/Thiamethoxam as required by Commission regulation 485/2013²,

- all internal documents and briefing notes regarding the confirmatory information for these 4 pesticides;
- all documents provided by the notifier for Fipronil³ and Imidacloprid/Clothianidin/Thiamethoxam⁴ on confirmatory information

¹ COMMISSION IMPLEMENTING REGULATION (EU) No 781/2013
of 14 August 2013

amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substance fipronil, and prohibiting the use and sale of seeds treated with plant protection products containing this active substance

² COMMISSION IMPLEMENTING REGULATION (EU) No 485/2013
of 24 May 2013

amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substances clothianidin, thiamethoxam and imidacloprid, and prohibiting the use and sale of seeds treated with plant protection products containing those active substances

³ "The notifier shall submit confirmatory information as regards:

- (a) the risk to pollinators other than honey bees;
- (b) the acute and long-term risk to colony survival and development, and the risk to bee brood from plant and soil metabolites, except the soil photolysis metabolites;
- (c) the potential exposure to dust drift emitted during the drilling procedure and the acute and long-term risk to colony survival and development, and the risk to bee brood for situations where bees forage on vegetation exposed to dust drift;
- (d) the acute and long-term risk to colony survival and development, and the risk to bee brood from foraging on insect honeydew;

- all documents sent by the Rapporteur MS on these 4 confirmatory information provisions, to the notifiers, Commission and EFSA
- all comments received from Member States and EFSA regarding the 4 confirmatory information provisions;
- all mandates sent to EFSA on the confirmatory information for these 4 pesticides;
- all documents on meetings and telephone conferences with the notifiers regarding these 4 confirmatory information provisions;
- any other document relating to the confirmatory information provisions for these 4 pesticides.

We need this information to be able to properly do our work and follow our mission to inform the public about the risks for health and the environment of hazardous pesticides. We do need all information and documents and not only the final published opinion to find out what exactly the arguments were to include or exclude scientific knowledge and to find out who was involved and potential conflicts of interests were present.

This application for access to documents is made under Regulation 1049/2001 of 30 May 2001 regarding access to European Parliament, Council and Commission document (Public Access to documents EC Regulation 1049/2001) and EC Regulation 1367/2006 of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in decision-making and Access to Justice in Environmental Matters to Community Institutions and bodies (Aarhus EC Regulation 1367/2006).

We specifically refer to the article in EU Regulation 1367/2006 on “environmental information”, art. 2.1.d:

(d) ‘environmental information’ means any information in written, visual, aural, electronic or any other material form on:

(i) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(e) the potential exposure to guttation fluid and the acute and long-term risk to colony survival and development, and the risk to bee brood;

(f) the potential exposure to residues in nectar and pollen, honeydew and guttation fluid of succeeding crops or weeds occurring in fields, including the persistent soil metabolites (RPA 200766, MB 46136 and MB 45950).

The notifier shall submit that information to the Commission, the Member States and the Authority by 30 March 2015.”

⁴ "The notifier shall submit confirmatory information as regards:

(a) the risk to pollinators other than honey bees;

(b) the risk to honey bees foraging in nectar or pollen in succeeding crops;

(c) the potential uptake via roots to flowering weeds;

(d) the risk to honey bees foraging on insect honey dew;

(e) the potential guttation exposure and the acute and the long-term risk to colony survival and development, and the risk to bee brood resulting from such exposure;

(f) the potential exposure to dust drift following drill and the acute and the long-term risk to colony survival and development, and the risk to bee brood resulting from such exposure;

(g) the acute and long term risk to colony survival and development and the risk to bee brood for honeybees from ingestion of contaminated nectar and pollen.

The notifier shall submit that information to the Commission, the Member States and the Authority by 31 December 2014.”

(ii) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in point (i);

(iii) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in points (i) and (ii) as well as measures or activities designed to protect those elements;

(iv) reports on the implementation of environmental legislation;

(v) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in point (iii);

(vi) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in point (i) or, through those elements, by any of the matters referred to in points (ii) and (iii);

Most documents we request are to be qualified as environmental information as defined in 1367/2006 which should be disclosed in the general interest of the public. As ruled by Court disclosure of these documents should be the general rule and grounds for refusal should be interpreted restrictively only in a few specific and clearly defined cases.

We so refer to the recent verdict of Luxemburg court (judgments in cases C-612/13 P and C-615/13 P) stating that the names of experts shall be released⁵, a few relevant lines are:

69 *[...] while the authority concerned must assess whether the disclosure requested might have a specific and actual adverse effect on the interest protected (see, to that effect, the judgment in Sweden and Turco v Council, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 49), EFSA's allegation that the disclosure of the information at issue would have been likely to undermine the privacy and integrity of the experts concerned is a consideration of a general nature which is not otherwise supported by any factor which is specific to this case. On the contrary, such disclosure would, by itself, have made it possible for the suspicions of partiality in question to be dispelled or would have provided to experts who might be concerned with the opportunity to dispute, if necessary by available legal remedies, the merits of those allegations of partiality.*

70 *If such a claim as that made by EFSA, unsupported by evidence, were to be accepted, it could be applied, generally, to any situation where an authority of the European Union obtains the opinions of experts prior to the adoption of a measure which has effects on the activities of economic operators in the sector concerned by such a measure, regardless of*

⁵ See [Case C-615/13 P](#) (Clientearth & PAN Europe vs EFSA), which was an appeal to [Case T-214/11](#).

which sector. Such an outcome would be contrary to the requirement that exceptions to the right of access to documents held by the institutions must be interpreted strictly, a requirement which entails that it must be established that there is a risk of a specific and actual adverse effect on the interest protected

We also refer to the recent verdict of the EU Ombudsman⁶ stating that "ongoing policy" or obstruction to the decision-making process" cannot be used as an argument for not disclosing documents (Decision of the European Ombudsman closing the inquiry into complaint 2186/2012/FOR against the European Chemicals Agency). This much-used argument by EFSA and Commission should be abandoned.

*As for the protection of the decision making process, the Ombudsman noted that interested parties will seek to impose pressure on the ECHA decision-making process irrespective of whether or not the documents relating to that process are made public. Furthermore, pressure from stakeholders is entirely legitimate and useful pressure that can improve ECHA's decision-making process. **In particular, the Ombudsman underlined that disclosure of draft decisions are vital to the understanding of ECHA's decision-making process, since they reveal the starting point for ECHA's deliberations.** Therefore the Ombudsman recommended that ECHA discloses all the requested documents.*

As you may be aware that the Lisbon Treaty expands the scope of application of Regulation 1049/2001 and of Regulation 1367/2006 on the application of the Aarhus convention to EU institutions also to the Agencies of the European Union, these Regulations prevail over Commission rules on access to documents. Please note that any exception to the right to access information must be interpreted restrictively and the Jurisprudence of the European Court of Justice (joined cases T-391/03 and T-70/04; joined cases C-39/05 and C-52/05) foresees that the institution, in case of denial must:

- State reasons for the decision;
- Demonstrate that the disclosure of the requested document falls under the scope of an exception provided under Article 4 of Regulation 1049/2001
- Carry out an examination that is “specific in nature” and “concrete” for each requested document.

With this application we respectfully request DG SANTE to grant access to the requested documents within the deadline foreseen by Article 7(1) of Regulation 1049/2001.

Yours sincerely,

Pesticide Action Network Europe,
Martin Dermine

⁶ <http://www.ombudsman.europa.eu/cases/decision.faces/en/60252/html.bookmark>

n. de v. e