

# BRIEFING

## Commission's transparency practice at an all-time low.

### Fully censored information in 67 relevant documents on endocrine disruption

**Commission entirely disrespects Luxembourg court verdict**

**Commission misleads the public on the legal basis for refusal**

**What to expect from new Commission transparency proposal?**

#### 1. Request for access to documents.

A request from the Pesticide Action Network to DG SANTE for documents on endocrine disruptors policy in 2016 was refused in 2017 because the policy was still “ongoing” and disclosure would harm the decision-making process (Regulation 1049/2001, Art. 4.3, first part). While a range of less relevant documents (letters to the Commissioner, invitations, already published documents) was partly disclosed, every document regarding DG SANTE officers and their discussions within or with other DG's was censored based on this “ongoing policy” argument. E-mails which we received in the past if we requested documents were even not included in the SANTE-list of available documents. We simply get nothing relevant. Commission's transparency is at an all-time low.

#### 2. The Court condemns the Commission.

The “ongoing policy” argument for keeping documents secret has been used by Commission increasingly and currently as a standard procedure. The justification is very poor and put in general terms. EU court already published a verdict<sup>1</sup> in a case put forward by the Pesticide Action Network on a previous 2014 request to DG SANTE for documents on endocrine disruption. Court condemned in 2016 the unconditional use of the “ongoing policy” argument by Commission. Court ruled that “*such general, vague and imprecise statements do not prove that there is genuine external pressure on the decision-making process at issue in the present case and are not based on any concrete evidence such as to justify them*”. Court also ruled on “ongoing policy” that: “*such an application can be justified only if the institution has previously determined (i) that access to the document would specifically and actually undermine the protected interest and (ii) in the circumstances referred to in Article 4(2) and (3) of Regulation No 1049/2001, that there is no overriding public interest justifying disclosure of the document concerned. On the other hand, the risk of the protected interest being undermined must be reasonably foreseeable and not purely hypothetical*”. Not one of the four conditions for granting the exemption was met.

#### 3. Misleading the public – ignoring Court's verdict.

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<http://curia.europa.eu/juris/document/document.jsf?text=&docid=183542&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=436302>

In Juli 2018 we made a new request to obtain all documents we requested before since there is no “ongoing policy” anymore. The decisions on endocrine disruption have been taken. Art. 4.3 cannot be used anymore. To our surprise we obtained none of the 67 documents that were previously withheld to hide the views of EU civil servants on endocrine disruption. Now suddenly, Art. 4.3, second part, was used as a reason. This part is to protect any future decisions. This second part was never used before and this means Commission has been misleading us. Now suddenly a potential, unspecified future decision on endocrine disrupting is the reason for the refusal to disclose the documents. All internal discussion in Commission have become a secret. Today we send

To get a flavor of SANTE’s current transparency practice document 660 is attached, a “partial access” disclosed document with 19 censored pages. Another example attached is document “IASG April 2016”, with “further partial access”, also page after page censored. And, more, the reason for refusal was -again- put in very general terms. Commission fully ignored Court’s verdict from 2016 that demanded that a four-step procedure was followed for every single document to justify non-disclosure. It is difficult to understand why Poland and Hungary are challenged in court when Commission itself is disregarding the rule of law.

#### 4. Conclusion.

Commission’s transparency practice has gone down dramatically in the last 8 years. Numerous reasons are applied to keep documents secret, reasons not applied some years ago. Emails were disclosed in the past but now even disregarded at all as being a document. All-in-all, the “access to documents” tool for the public has become blunt. Commission is even out of control since it ignores court verdicts. This transparency practice is in grave contradiction to Commission’s website on transparency that promotes that EU citizens have the right to know how European institutes are preparing their decisions (Transparency portal). One could wonder if the new Commission transparency proposal, [http://europa.eu/rapid/press-release\\_MEMO-18-2942\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-2942_en.htm), will be more than trying to get an undeserved image and throwing sand in the eyes of the Parliament and the public.

Pesticide Action Network Europe

14-09-2018.

Three attachments,

- Confirmatory application to SG
- Document 660
- Document IASG April 2016.