

Parma, 19 April 2018
Ref. DD/LV/mm (2017) - out-19304753

Finn Jensen
Frit Fjerkræ
Danish Poultry organisation for
hobby- and smallholders
Ulstrup Skovvej 3 Sdr Vinge
DK-8860 Ulstrup
Denmark

e-mail: ask+request-4768-545ef57d@asktheeu.org

Re: Your request for access to documents of 8 November 2018

Our ref.: PAD 2017/099

Dear Mr Jensen,

I refer to your request of 8 November 2017, submitted from the website "Ask the EU", by means of which you requested access to data pertaining to the EFSA Scientific report on the avian influenza overview October 2016–August 2017¹ (hereinafter "*the Scientific Report*"), in accordance with Regulation (EC) No 1049/2001 regarding public access to documents² (hereinafter "*the PAD Regulation*").

By means of your e-mail of 30 November 2017, you clarified that you are interested in receiving all additional epidemiological data on the Avian Influenza (AI) outbreaks in poultry and captive birds that occurred from October 2016 to 30 April 2017, submitted by 19 Member States (MS)³ directly to EFSA by means of Excel files in the context of the Scientific Report (hereinafter "*the AI data*").

As per our letter of 26 March 2018⁴, EFSA provided you with a first batch of documents, granting you full access to the AI data of 15 out of 19 MS organisations, i.e. 24 out of 30 requested Excel files in EFSA's possession.

We have further assessed your request in accordance with the PAD Regulation and Regulation (EC) No 1367/2006⁵ (hereinafter "*the Aarhus Regulation*") and we are pleased to complement our letter of 26 March 2018, as detailed in the following section.

¹ European Food Safety Authority, European Centre for Disease Prevention and Control, European Union Reference Laboratory for Avian influenza, Brown I, Mulatti P, Smietanka K, Staubach C, Willeberg P, Adlhoch C, Candiani D, Fabris C, Zancanaro G, Morgado J and Verdonck F, 2017. Scientific report on the avian influenza overview October 2016– August 2017. EFSA Journal 2017;15(10):5018, 101 pp. <https://doi.org/10.2903/j.efsa.2017.5018>.

² Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43-48, applicable to EFSA.

³ Data was received from Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Romania, Slovakia, Spain, Sweden and the United Kingdom.

⁴ By means of EFSA's letter of 26 March 2018, we took due note of your e-mail of 4 March 2018 and addressed your request to receive, even partially, the AI data prior to the date proposed in EFSA's letter of 1 March 2018.

1. Complementary reply – Accessibility of the AI data from 4 MS organisations

Following extensive consultations and clarifications with the remaining 4 out of 19 MS organisations in line with Article 4(5) of the PAD Regulation, which provided 6 out of 30 requested Excel files in EFSA's possession, we are complementing EFSA's reply on the accessibility of the AI data.

Accordingly, we are pleased to grant you full access to the AI data of 2 MS organisations, i.e. 3 out of 30 requested Excel files in EFSA's possession. Please note in this regard that the Spanish MS organisation, while agreeing on full disclosure of their AI data, stressed that an improper use of the data may be sanctioned under Spanish national law as concerns the protection of personal data⁶.

Moreover, partial access is provided to the AI data of 1 MS organisation, i.e. 1 out of the 30 requested Excel files in EFSA's possession.

Notably, masking is applied to minor parts of columns F (locality) and AX (free text) as well as the complete columns K (related reference number), AJ (holding ID) and column AM (production unit ID) since the disclosure of these (parts of) the columns would lead to the identification of economic operators.

Indeed, the MS organisation which agreed on partial disclosure of its AI data maintained that the parts of the Excel file masked are to be protected in accordance with Article 4(2), first indent, of the PAD Regulation. Especially, the MS organisation at hand emphasized that a disclosure of these parts in the specific situation of the MS may risk to seriously undermine the commercial interest of the concerned economic entities. Please note that in concluding on the partial disclosure, consideration was taken of whether an overriding public interest in light of the Aarhus Regulation exists⁷.

We hope you find the disclosed Excel files useful. I must remind you that all persons reproducing, redistributing, exploiting or making commercial use of this information are expected to adhere to the terms and conditions asserted by the copyright holder.

It is to be highlighted that with the disclosure of the two batches of documents in reply to your request for access to documents with EFSA's reference PAD 2017/099, you have now overall received 28 out of the 30 Excel files requested by you.

As concerns the only remaining MS organisation, i.e. 2 out of 30 requested Excel files in EFSA's possession, we regret to inform you that the genuine dialogue⁸ has not reached a conclusive end. In particular, no prior agreement on the release of their data could be reached with this specific MS organisation. However, please be assured that EFSA is further engaging with the MS organisation with a view of assessing the accessibility of the remaining 2 Excel files.

2. Confirmatory application

To exercise your right to appeal against this decision of partial disclosure by a confirmatory application, you may write to EFSA at the address below. You have fifteen working days from receipt of this letter to appeal. Beyond this deadline, your initial

⁵ Regulation (EC) No 1367/2006 of the European Parliament and of the Council 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, OJ L 264, 25.9.2006, p. 13–19

⁶ Notably, the Spanish Data Protection Act: Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal (LOPD).

⁷ It shall be noted that Article 6(1) of the Aarhus Regulation provides that "*as regards Article 4(2), first and third indents, of Regulation (EC) No 1049/2001 [...] an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment*"

⁸ Judgment in Case C- 64/05 P, *Sweden v Commission* (EU:C:2007:802), paragraphs 85 to 89.

request will be considered as satisfied. In case you submit a confirmatory application, EFSA will inform you of the outcome of this re-examination of your request within fifteen working days of receipt, either by granting you access to the documents or by confirming the refusal. In the latter case, you will also be informed of any further appeal routes available.

Further correspondence must be sent to:

EFSA

Dirk Detken, Head of the Legal and Assurance Services

Via Carlo Magno 1/A

IT- 43126 Parma

Italia

E-mail: EFSA.public.access.to.documents@efsa.europa.eu

Yours sincerely,

[Signed]

Dirk Detken

Encl.: CD-ROM

Cc: N. Kriz (EFSA)