22 DEC 2016

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Chantal Viala
5 quai du pavois d'or
F - 34200 SETE
France

e-mail: ask+request-3533-
dbb589ce@asktheeu.org

Re: Your request for public access to documents of 27 October 2016
Ref.: PAD 2016/093

Dear Mrs Viala,

I refer to your request for access to documents of 27 October 2016, submitted through from the website Ask the EU, by means of which you requested access to "documents which contain the following information: data used in monitoring pesticides residues in 83 000 samples food as related in http://www.efsa.europa.eu/sites/default/files/images/infographics/pesticidesreport2014.png".

We have assessed your request in accordance with Regulation (EC) No 1049/2001 (hereinafter "the PAD Regulation") with the outcome outlined below.

1. Partial disclosure - 2014 Data on Pesticide Residues

Following consultations with the EU Member States and EFTA countries (hereinafter "the data providers"), in accordance with Article 4(5) of the PAD Regulation, we are pleased to grant you partial access to the 2014 data on pesticide residues, comprising the data from the EU-coordinated control programme and from national control activities.

The outcome of all of these consultations launched within EFSA’s Network on Pesticide Monitoring and the corresponding decision of EFSA on the data disclosure is reflected in the table in Annex to the present letter.

Overview:
We are pleased to provide you with full access to the data requested for the following nineteen data providers: Austria, Belgium, Croatia, Estonia, Greece, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom.

Additional ten data providers (Bulgaria, Czech Republic, Cyprus, Finland, Germany, Denmark, France, Hungary, Italy and Poland) agreed to partial access, invoking limited confidentiality claims in relation to few data elements in their respective national data submissions to EFSA. The very limited effective masking made of data elements in these country files is detailed in the Annex to the present letter.

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We regret to inform that EFSA is currently not in the position to disclose the data originating from the Slovak Republic. As a result of the consultation, the country expressed its disagreement with the release of raw data submitted to EFSA and would only consent to the disclosure of aggregated data, which would imply a further elaboration on the data, hence creating a new document. This falls outside the scope of the PAD Regulation in accordance with Article 2(3) thereof.

**Justification for partial disclosure of the 2014 data on pesticide residues:**
As you can derive from the table in Annex, from the consultation emerged a common position among a large group of data providers to invoke the confidentiality of specific data elements relating to the identification and traceability of business operators, food producers, distributors and importers as well as laboratories. Additionally, Cyprus raised a specific confidentiality claim with regard to the subset of samples analysed as "suspect sampling".

Having duly considered the arguments put forward by the data providers, EFSA holds that the disclosure of the aforementioned data elements indeed may cause harm to food industry operators and laboratories included in the national reporting.

As concerns the food industry, the disclosure of these data elements would create an incorrect representation since the data reported under the national and EU-coordinated monitoring programmes consist of non-exhaustive samples, which are not comprehensive on all food industry operators and laboratories. Disclosing these data will raise a competitive disadvantage and concrete harm to those operators identifiable from this sample reporting, in comparison to others not included or only partially included therein.

Considering the above, EFSA concludes that the disclosure of the specific data elements that were effectively masked as per the overview in Annex would specifically and actually undermine the commercial interest of the business operators and laboratories in the sense of Article 4(2), first indent, of the PAD Regulation. Moreover, since the datasets refer to analytical results on food samples, any interpretation of these or conclusions drawn risks to be incomplete, not representative, imprecise and therefore not reflecting the reality on the food production and distribution within the EU market. This reinforces the need to safeguard the interests of business operators from negative repercussions, justifying the masking of specific data elements in the datasets disclosed.

As concerns the data from the Slovak Republic, EFSA currently validates the arguments put forward by the country for not disclosing the respective data sets. It is claimed by the Slovak Republic that the data need to be protected as they represent the commercial interest of business operators in the sense of Article 4(2), first indent of the PAD Regulation. As the country reported to EFSA, these are mixed data resulting from official control which does not reflect the country’s production. The control data are collected from targeted areas, where the exceedance of residue levels may occur with higher likelihood. The disclosure of these results risks leading to misinterpretation.

EFSA finally also verified whether any overriding public interest in disclosure of the few SSD data elements effectively masked in the datasets disclosed to you, exists in the sense of Article 4(2), first indent, of the PAD Regulation. Balancing specifically and actually any public interest in disclosing these documents against the specific interests of

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2 However, please note that the number of samples in this subset analysed by Cyprus for 2014 is very minor. Cyprus suspect sampling for 2014 concerns merely 1.0% of the total samples, corresponding to just 8 suspect samples out a total of 623 samples taken.
the business operators, EFSA concluded that there is no such overriding public interest in disclosing the SSD data elements as these have been masked.

Practicalities with regards to the country-based datasets in enclosed DVD-ROMs:
For correct reading and understanding of the country files, please refer to the specific guidance on the use of the SSD for the 2014 pesticide monitoring data collection, which is available on EFSA's website: https://www.efsa.europa.eu/en/efsaJournal/pub/4195.

With regard to the datasets disclosed to you on the enclosed DVD-ROMs, we would like to clarify that data elements actually masked by EFSA are evidenced by means of the double asterisk "**". Likewise, blank fields in the excel tables indicate that the data are not in the possession of EFSA as these were initially not submitted by the data providers. In each of the country files a column has been added to the very right end of the table named "MASKED_FIELDS". This column reports which data elements have been actually masked for each of the single results' row.

We hope you find the disclosed documents 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.

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. 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 Regulatory Affairs Unit
Via Carlo Magno 1/A
I – 43126 Parma
E-mail: EFSA.public.access.to.documents@efsaeuropa.eu

Yours sincerely,

Dirk Detken

Encl.: Annex – EFSA decision on masking of data elements 2014 pesticides residues
2 DVD-ROMs

Cc: J. Tarazona (EFSA)
| Member States and EFTA countries - data providers |
|------------------------------------------------|------------------------------------------------|
| Ireland                                        | Portugal                                       |
| Greece                                         | Iceland                                        |
| Estonia                                        | Norway                                         |
| France                                         | United Kingdom                                 |
| Denmark                                        | Finland                                        |
| Czech Republic                                 | Sweden                                         |
| Belgium                                        | Cyprus                                         |
| Luxembourg                                     | Lithuania                                      |
| Spain                                          | Slovenia                                       |
| Austria                                        | Romania                                        |
| Latvia                                         | Bulgaria                                      |
| Austria                                        | Except 3 SSD data elements (prodBrandNam, prodManufName, labCode, resCommCode) |
| Hungary                                        | Except 4 SSD data elements (prodText, prodCom, labCode, labAccred) |
| Italy                                          | Except 5 SSD data elements (prodText, prodCom, labCode, labAccred) |
| Poland                                         | (prodCom not available with EFSA for most samples) |
| Germany                                        | Except 1 SSD data element (SampPoint)          |
| Except 2 SSD data elements (prodText, prodCom) |
| (labCode and labAccred)                        | (prodCom not available with EFSA for majority of samples) |

Masking of certain SSD data elements

Full disclosure