

10 FEB 2017

Ref. DD/CP/lm (2017) - 16831159

Vincent Harmsen
Auguste Lambiottestraat 39-1
1030 Brussels
Belgium

e-mail:
[ask+request-3699-
5a7763a1@asktheeu.org](mailto:ask+request-3699-5a7763a1@asktheeu.org)

Re: Your request for public access to documents of 22 December 2016
Ref: PAD 2016/109

Dear Mr Harmsen,

I refer to your request for public access to documents of 22 December 2016, by means of which you requested access to documents *'on the topic of the active substance glyphosate'*, specifically *'all correspondence (including emails), agendas, phone logs, minutes of meetings or any other reports of such meetings between officials/representatives of EFSA and officials/representatives of the Bundesinstitut für Risikobewertung (BfR) [...] (between March 2015 and December 22th 2016)'* in accordance with Regulation (EC) No 1049/2001 on public access to documents¹ (hereinafter *"the PAD Regulation"*).

Please allow me to clarify that considering the large number of documents concerned by your request and the resulting time consuming consultations in accordance with Article 4(5) of the PAD Regulation, EFSA would like to propose you a fair solution in application of Article 6(3) of the PAD Regulation². EFSA proposes to reply in batches along the process of finalisation of the consultations and following a case-by-case assessment of the set of documents requested.

The present letter includes a first batch, constituting the exchanges between EFSA and Bundesinstitut für Risikobewertung (BfR) pertaining to the year 2015. EFSA will provide you with the second batch of documents in complement to the present disclosure by **Friday 3 March 2017 at the latest**.

1. Partial disclosure – 1st batch

As a preliminary remark, we would like to inform you that in accordance with Article 38(1)(c) of EFSA's Founding Regulation³, all background information relating to EFSA's peer review of glyphosate are proactively published on EFSA's website. This includes amongst others a peer review report, which contains comments received during the

¹ 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.

² 'In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view of finding a fair solution'.

³ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ L 31, 1.2.2002, p. 1-24, as last amended.

different consultation phases and the outcomes of the expert meetings. You will find references to these comments and documents in the correspondence disclosed to you.

We are pleased to provide you access to the e-mails exchanged between EFSA and BfR in the period March 2015 until 8 December 2015 by means of a CD-ROM. Please be informed that few e-mail exchanges or parts of e-mail exchanges are not disclosed to you in application of the system of exceptions to public disclosure laid down in the PAD Regulation as detailed below.

Few e-mail exchanges discussing scientific views and arguments directly relating to an on-going scientific risk assessment by the EFSA Panel on Plant Protection Products and their Residues (PPR Panel) regarding a follow-up of the findings of an External Scientific report on epidemiological studies linking exposure to pesticides and health effects⁴ are not disclosed to you in accordance with Article 4(3) first indent of the PAD Regulation. In EFSA's view, the preliminary disclosure of the e-mail exchanges at the present stage bears the risk of specifically and actually impacting on the on-going scientific risk assessment of the PPR Panel. The premature public disclosure of the e-mail exchanges before EFSA's risk assessment has been concluded may generate confusion and misunderstanding in the public opinion and carry the concrete risk of leading to erroneous interpretations and misunderstanding on the scientific discussions held in PPR Panel of EFSA which has not come to a conclusive end.

EFSA also ascertained whether any overriding public interest in disclosure of the e-mail exchanges exists in the sense of Article 4(3), first paragraph, of the PAD Regulation. Balancing specifically and actually any public interest in disclosing the document with the interest of preserving the independence and objectivity of the on-going scientific risk assessment, we come to the conclusion that at this stage no such overriding public interest in disclosing the exchanges exists.

Please note that names of authors involved in testing on vertebrate animals have been masked in one e-mail exchange, as they are covered by the exception foreseen under Article 4(2), first indent of the PAD Regulation, their full protection also being a direct consequence of their qualification as confidential information in accordance with Article 63(2)(g) of Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market⁵.

Furthermore, personal data (i.e. names of individuals and other personal data such as hand written signature) present in all the documents disclosed have been masked in accordance with Article 4(1)(b) of the PAD Regulation and Article 8(b) of the Data Protection Regulation (EC) No 45/2001⁶. In line with the settled case law of the Union Courts⁷, EFSA will only be able to balance the interests at stake and to consider the disclosure of personal data after you have provided an express and legitimate justification and convincing arguments in order to demonstrate the necessity of having personal data transferred to you. We hope you find the disclosed correspondence 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

⁴ You are able to verify the progress of the scientific assessment using Mandate Number M-2014-0162 and the Question Number EFSA-Q-2014-00481 in the respective search fields of the EFSA Register of Questions, available on EFSA's website: <http://registerofquestions.efsa.europa.eu/roqFrontend/ListOfQuestionsNoLogin>

⁵ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, OJ L 309, 24.11.2009, p. 1-50.

⁶ 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, OJ L 8, 12.1.2001, p. 1-22.

⁷ See Judgment in Case C-28/08 P, European Commission v The Bavarian Lager Co. Ltd., EU:C:2010:378.

asserted by the copyright holder. This applies in particular to the quotation of an article published in EU Food Policy which is disclosed to you on page 38 of Document 1.

2. Confirmatory application

To exercise your right to appeal against this decision of partial disclosure in this first batch 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 Assurance Services Unit
Via Carlo Magno 1/A
e-mail: EFSA.public.access.to.documents@efsa.europa.eu

Yours sincerely,



Dirk Detken

Encl: CD-ROM

Cc: H. Deluyker, J. Tarazona