

Implementing the reform of the General Food Law

Recommendations on the Practical Arrangements for confidentiality decisions

ClientEarth supports the content of EFSA's Non-paper¹

We support the content of the Non-paper that EFSA published as a Staff Working document in March 2020, on the practical arrangements implementing Articles 38 (1) and 39d(5) of Regulation (EC) n° 178/2002, in particular:

- The strong commitment to transparency made by EFSA in the introduction;
- The proposals related to the proactive publication of environmental information, perfectly in line with the objectives of the Aarhus Regulation and the transparency reform of the General Food Law (GFL);
- The use of quantitative threshold and time limit to create a rebuttable presumption of non-confidentiality, or in other words an obligation for applicants to provide a specific justification for confidentiality when the time limit/threshold are met. Such rebuttable presumptions increase the predictability of EFSA's approach.

We call on EFSA to maintain this approach on the draft to be adopted in the fall.

¹ March Staff Working Document - https://ec.europa.eu/food/sites/food/files/safety/docs/gfl_expg_20200303_efsa.pdf

Additional recommendations

The definition of ‘verifiable’ justifications - We invite EFSA to give guidance on what can be considered as a ‘verifiable’ justification. The Non-paper covers the type of justification needed but not the nature of the evidence deemed as sufficiently reliable. Guidance on both aspects is necessary.

Access to the full report - We urge EFSA and the Commission to not give in to industry requests to not proactively publish the full reports. Access to the full report – with the exception of the information for which a confidentiality request is granted - was the foundational ambition of the transparency reform. Limiting the publication to information on which studies are included would significantly and illegally hinder the right to access created by the reform.

Undertakings or signed statements by third parties – It is justified to require from third parties an action that will demonstrate that they were reminded of their obligation to use the information published for non-commercial use only. However, the system created to do so cannot create practical hurdles that would hinder the right to access. The system created on the ECHA website (a pop up window that must be ticked to access the content) is a good example of a reasonable system.

Apolline Roger

Law and Policy Advisor, Chemical Project Lead

020 7749 5975

aroger@clientearth.org

www.clientearth.org



Brussels

60 Rue du Trône (3ème étage)
Box 11, Ixelles, 1050 Bruxelles
Belgique

Beijing

1950 Sunflower Tower
No. 37 Maizidianjie
Chaoyang District
Beijing 100026
China

Berlin

Albrechtstraße 22
10117 Berlin
Germany

London

Fieldworks
274 Richmond Road
Martello St. Entrance
E8 3QW
United Kingdom

Warsaw

ul. Mokotowska 33/35
00-560 Warszawa
Polska

Madrid

García de Paredes
76 duplicado
1º Dcha
28010 Madrid
Spain

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 HB, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836.