

POLLINIS

A NONPROFIT AND INDEPENDENT ORGANIZATION THAT CAMPAIGNS FOR SUSTAINABLE FARMING IN EUROPE. POLLINIS FIGHTS AGAINST THE SYSTEMATIC USE OF PESTICIDES, FOR THE PROTECTION OF POLLINATORS AND PROMOTES ALTERNATIVE AGRICULTURAL PRACTICES. WE ARE SUPPORTED EXCLUSIVELY BY DONATIONS FROM PRIVATE INDIVIDUALS.

COMMENTS ON THE PRACTICAL ARRANGEMENTS IMPLEMENTING REGULATION (EU) 2019/1381

POLLINIS supports the practical arrangements as elaborated by the EFSA in its Non-paper of February 2020¹ and EFSA's commitment to strengthen transparency within the European general food law. We believe these changes are very needed.

This is the reason why POLLINIS calls on the EFSA to stick as closely as possible to this Non-paper while adopting the final version of the practical arrangements, ensuring that the improvements on transparency therein contained will be maintained.

¹ https://ec.europa.eu/food/sites/food/files/safety/docs/gfl_expg_20200303_efsa.pdf

1

POLLINIS

10, RUE SAINT MARC • 75002 PARIS
+33 1 40 26 40 34 • CONTACT@POLLINIS.ORG • WWW.POLLINIS.ORG



Specific recommendations:

No.	Reference to relevant part of the document	Comments
1	<p>3. Proactive disclosure and IT standards</p> <p>“That dedicated section of the website must be publicly available and easily accessible. The information, documents and data to be publicly disclosed pursuant to Article 38(1) of the GFL Regulation must be available to be downloaded, printed and searched electronically.”</p>	<p>These information, documents and data must always be immediately submitted in the most accessible and understandable format possible for third parties without specific knowledge on the matter. In particular, reports must be fully available.</p> <p>However, data washing effect must be avoided by highlighting important information contained in these documents.</p>



2	<p>4. Confidentiality requests</p> <p>“Article 39 of the GFL Regulation sets out specific requirements as to the types of information that may qualify for confidential treatment under certain conditions and only with regard to items inserted in the closed list in paragraph 2 of this Article. To address sectoral specificities, sector specific closed positive lists are outlined in Regulation (EC) No 1829/2003, Regulation (EC) No 1831/2003, Regulation (EC) No 1935/2004, Regulation (EC) No 1331/2008, Regulation (EC) No 1107/2009, Regulation (EU) 2015/2283 and Directive 2001/18/EC.”</p>	<p>Ensuring scrupulous compliance with conditions under which confidentiality requests are granted is of the utmost importance. Confidentiality requests relating to document, information, or data not inserted in the closed lists of the EU Regulations must be systematically refused. Only the specific passages containing confidential information should be redacted. To put an end to the repeated abuses observed in practice, applicants’ confidentiality requests must be publicly available, as well as the reasons for the confidentiality treatment of each redacted information.</p>
---	---	---

3	<p>6. Proactive dissemination of environmental information</p> <p>“The provisions on proactive dissemination laid down in the GFL Regulation and the relevant assessment of confidentiality requests should not affect the rights stemming from Regulation (EC) No 1049/2001² and, where environmental information is concerned, the rights enshrined in Regulation (EC) No 1367/2006 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 (henceforth the “Aarhus Regulation”).”</p>	<p>The proactive publication of environmental information represents a key element of the new Regulation, which should enable a full implementation of the Aarhus Regulation.</p>
4	<p>7. Submission of confidentiality requests</p> <p>“When submitting confidentiality requests, the concerned individuals should do so by:</p> <ol style="list-style-type: none"> 1. submitting confidentiality requests only via the IT tool(s) 2. avoiding modifying or complementing confidentiality requests” 	<p>POLLINIS highlights the importance of avoiding to modify or complement confidentiality requests. Their use must be strictly controlled to prevent any abuse. The practical arrangements should provide for a mechanism to warn or sanction applicants who repeatedly formulate modifying or complementing requests.</p>

5	<p>8. Minimum content of confidentiality requests</p> <p>“When submitting confidentiality requests [...] that information would still potentially harm its interests to a significant degree.”</p>	<p>POLLINIS supports the approach adopted by EFSA regarding confidentiality requests. It is essential to remind that confidentiality of information is not the general rule but an exception which must not be trivialized.</p> <p>This provision should specify that confidentiality requests must not be granted until all the requested information is provided.</p> <p>Moreover, POLLINIS invites the Authority to add a paragraph « g » as follows:</p> <p>“g. the confirmation that the document, information or data for which confidentiality status is requested does not fall under the scope of the exceptions laid down in Article 39(4) of Regulation (EU) 178/2002 as regards the protection of human health, animal health or the environment.”</p> <p>Finally, POLLINIS recommends to clarify the kind of evidence considered as sufficiently reliable.</p>
---	---	---

6	<p>8. Minimum content of confidentiality requests</p> <p>Point 2(c): “explanation or evidence demonstrating to the satisfaction of the Authority that the harm that may be caused is of a significance corresponding at least to 5% of their total turnover for legal persons, or earnings for natural persons. If the harm is quantified as not reaching this percentage, the person shall provide a specific reason on why they considered that any public disclosure would potentially harm their interests to a significant degree.”</p>	<p>For this provision, on which ground did the Authority decide to set the minimum percentage at 5% of the applicant’s total turnover for legal persons, or earnings for natural persons ?</p>
---	---	--

7	<p>8. Minimum content of confidentiality requests</p> <p>Point 2(e): “the confirmation that the document, information or data for which confidentiality status is requested does not fall under the definition of “environmental information” pursuant to Article 2 of the Aarhus Regulation.”</p>	<p>In its recommendation in case 2142/2018/TE and on the basis of the Judgment of the Court ClientEarth v Commission, the European Ombudsman affirms that « <i>the Aarhus Regulation aims at ensuring that environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination. The purpose of access to this information is to promote more effectively public participation in the decision-making process, thereby increasing the accountability of decision-making and contributing to public awareness and support for the decisions taken</i> ». This broad interpretation of the Aarhus Regulation must be taken into consideration while assessing the confidentiality status of any document, information or data.</p>
8	<p>Additional content regarding data brought by third parties</p>	<p>POLLINIS strongly believes that only the EFSA, as the most competent and independent body on the matter, must be entitled to evaluate? the quality of data brought by third parties during consultations. This should be clarified and explicitly specified within the practical arrangements.</p>