



Business secrecy to trump public right to know?

European Citizens' Initiative statement on the European Commission's transparency proposal

For decades, the agricultural industry has claimed that its products are safe for people and the environment, based on secret studies that it commissioned or conducted itself. However, safety claims are not always backed up by the industry's own studies, as the example of glyphosate has shown. When independent experts reviewed parts of the long-term toxicity studies disclosed by the European Food Safety Authority (EFSA), it turned out that both EFSA and the European Chemicals Agency (ECHA) had ignored relevant findings.¹

More than one million Europeans asked the European Commission to ensure that "all studies used to back up regulatory approval of pesticides must be published", as part of the European Citizen's Initiative (ECI) *Ban glyphosate and protect people and the environment from toxic pesticides*.² As organisers of the ECI, we therefore welcome the Commission's proposal to oblige EFSA to proactively publish all industry studies on potentially harmful regulated products, such as pesticides, GMOs or feed additives, as soon as it receives them.

However, the current proposal needs to be amended to deliver the promised increase in transparency. If the current version becomes law, EFSA would have to release a greater number of documents. But newly introduced confidentiality rules would allow industry to withhold important information contained in these documents, making it impossible for scientists to scrutinize industry's safety claims and determine potential impacts on people's health and the environment. Even worse, the proposed rules risk severely restricting existing rights of citizens to access information that EFSA does not publish upfront. The new confidentiality regime could prevent EFSA from disclosing information to individuals upon request, even when there is an overriding public interest as defined under Regulations (EC) No 1049/2001 and 1367/2006. This is unacceptable and not in the public interest, and must not be the outcome of the Commission's transparency proposal.

We therefore ask the European Parliament and national governments to amend the Commission's proposal so that industry studies are published in a way that allows an independent examination of any health and environmental impacts, and that preserves citizens' rights established under the current access-to-information rules.

To achieve this goal, the European Parliament and national governments must introduce the following changes:

(1) No step back on transparency, only steps forward

- It must be clearly stated that the new rules on proactive dissemination do not limit in any manner the scope of the rights given by Regulations (EC) No 1049/2001 and 1367/2006 on access to documents upon request.
- The 'transparency safeguards', which allow EFSA to publish confidential information when its disclosure is in the public interest, should be at least as broad as the existing ones (for example 'overriding public interest' must remain a trigger for disclosure).



(2) A watertight text to protect EFSA from excessive claims and legal challenges by industry

- The lists of commercial information that may be considered for confidential treatment (including the list in the proposed Article 39(2) as well as similar lists in sectoral legislation) must be clearly exhaustive.
- The protection of intellectual property rights (IPR) needs to be reworded to ensure that:
 - a) IPR cannot be misinterpreted as offering new grounds to claim information as confidential, in addition to the grounds already listed in the proposed Article 39(2),
 - b) IPR cannot be used to prevent independent scientists from evaluating industry studies and citing them in scientific publications.

(3) A reform that delivers full transparency on health and environmental impacts

- The lists of 'confidential information' must be reviewed, to ensure that all information needed to understand the impact of the regulated products on health and environment (e.g. the composition of pesticides), is excluded from confidential treatment.
- Confidentiality must only be granted upon justified and verifiable grounds and on a case-by-case analysis of whether the disclosure of the information would seriously undermine the commercial interests of the applicant. EFSA must publish the reasons for granting confidentiality in each case.
- Those parts of the documents, for which confidentiality has been granted, must not be simply deleted but stay in the public version and be hidden with black bars so as to allow an assessment of the place and length of the elements considered to be confidential.
- It must be possible to challenge EFSA's decisions about confidentiality in court, not only for industry, but also for civil society.

The following elements of the proposal must be maintained:

- Studies and supplementary information supporting applications to be published by EFSA as soon as received.
- The publication of more than the summary of the dossier under Article 10 of Regulation (EC) No 1107/2009 on pesticides.
- The imposition of a standard and searchable format for the data (proposed Article 39f of Regulation (EC) No 178/2002).
- The clarification of the process used to handle confidentiality requests (proposed Article 39a & b of Regulation (EC) No 178/2002).

European citizens deserve access to all the information the EU relies on when it authorises products to be used in the production of food and released into our environment. This information must be available early after submission to enable

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meaningful public consultation and scientific scrutiny. This will help to achieve the high level of protection of health and the environment enshrined in EU law.

For a more detailed analysis of the transparency provisions proposed, see ClientEarth's [*Analysis of the new provisions on transparency*](#).

1 Letter by Prof Portier to Commission President Juncker, May 2016, <https://www.scribd.com/document/360560279/Lettre-de-Christopher-Portier-a-Jean-Claude-Juncker-du-28-mai-2017>

2 Annex to the ECI, http://ec.europa.eu/citizens-initiative/public/documents/3496/DS_Annex.pdf