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Case summary posted by the Task Force on Access to Justice

EUROPEAN UNION, ClientEarth and Pesticide Action Network Europe (PAN Europe) v European Food Safety Authority (EFSA), C-615/13 P

<i>1. Key issue</i>	Access to information – Two cumulative conditions must be fulfilled for disclosure of the external experts names who made certain comments on the draft of the guidance document for applicants who wish to place plant protection products on the market: the transfer must be ‘necessary’ and must not prejudice the legitimate interests of the data subject.
<i>2. Country/Region</i>	European Union
<i>3. Court/body</i>	Court of Justice of the European Union (CJEU)
<i>4. Date of judgment /decision</i>	2015-07-16
<i>5. Internal reference</i>	<i>CJEU – Second Chamber, C-615/13 P</i>
<i>6. Articles of the Aarhus Convention</i>	Art. 4, paras. 1 and 4 (f)
<i>7. Key words</i>	Access to information, placing of plant protection products on the market, disclosure of information, concept of personal data, confidentiality and transfer of personal data, Regulation EU 1049/2001

8. Case summary

The European Food Safety Authority (EFSA) promulgated a draft guidance document for applicants who wish to place plant protection products on the market (pursuant to article 8(5) of EU Regulation 1107/2009). ClientEarth and PAN Europe (the applicants) submitted an application to EFSA requesting access to documents under EU Regulation 1049/2001. EFSA initially withheld its documents but then retracted its position in 2011, granting access to all the information requested except for the names of the external experts who made certain comments on the draft of that guidance document. ClientEarth appealed this latter decision to the General Court of the European Union.

The General Court rejected the applicants’ request (T-214/11) for the names of the external experts and the case came before the CJEU. Firstly, the CJEU held that the information requested was ‘personal data’ within the meaning of article 2(a) of Regulation 45/2001 because it would connect a scientific expert to a particular comment he or she had made. Secondly, it held, in line with the General Court’s approach, that two cumulative conditions must be fulfilled before a transfer of personal data could be granted: the transfer must be ‘necessary’ (article 8(b) of Regulation 45/2001) and must not prejudice the legitimate interests of the data subject. Finally, the CJEU disagreed with the General Court, finding that the transfer of personal data was necessary ‘so that the impartiality of each of those experts in carrying out their tasks as scientists in the service of EFSA could be specifically ascertained’ and in order to dispel with the accusations of partiality made against EFSA and ensure its decision-making processes are transparent.

Moreover, EFSA had not given any specific reasons to suggest that the transfer might prejudice the legitimate interests of the data subjects.

Therefore, CJEU set aside the judgment of the General Court of the European Union in ClientEarth and PAN Europe v EFSA (T-214/11) and annulled the decision of EFSA.

9. *Link to judgement/
decision*

<http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-615%20P&td=ALL>

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