

Standard Operation Procedures	SOP_036_A
Effective Date: 25/01/2021	Public

Applications for Public Access to Documents (PAD)

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Process Responsibility	Process owners are accountable this procedure being adhered to within their respective or unit. All relevant staff is responsible for the correct implementation of the procedure. Responsibilities for performing specific steps are outlined in the document.
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SCOPE AND OBJECTIVES

This SOP describes the process for coordinating and handling all applications for access to documents received by EFSA in accordance with Regulation (EC) No 1049/2001 and processed in line with the relevant legislations including Regulation (EC) No 1367/2006. This procedure describes steps relevant to the process E12.06.01 Public Access to Documents Management.

LA and the concerned Unit(s): LA centralises the handling of all applications for public access to documents in collaboration with the concerned Unit(s).



RELEVANT STANDARDS, LEGISLATION AND DOCUMENTS

Article 15 of the Treaty on the Functioning of the European Union; Article 42 of the Charter of Fundamental Rights of the European Union; Articles 38, 39 to 39e and 41 of Regulation (EC) No 178/2002 laying down the general principles of food law, establishing the European Food Safety Authority and laying down the procedures in relation to food safety, as amended by Regulation (EU) 2019/1381 on the transparency and sustainability of the EU risk assessment and the food chain which applies as of 27 March 2021; Regulation (EC) No 1049/2001 on public access to documents; Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ; 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 Matter to Community institutions and bodies; Directive 2003/4/EC on public access to environmental information; Regulation No 31 (EEC), 11(EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of other servants of the European Economic Community and the European Atomic Energy Community, Regulation (EU, Euratom) No 2018/1046 on the financial rules applicable to the general budget of the Union and other sectoral legislation applicable to documents in EFSA's possession; sectoral legislation in EFSA's remit in food and feed safety, such as pesticides, GMOs, animal welfare, animal and plant health, nutrition; case law of the Court of Justice of the European Union (CJEU) and its latest developments; EFSA's Records Management Policy EFSA/POL/87; EFSA Code of Good Administrative Behaviour; European Code of Good Administrative Behaviour; Decision of the Management Board laying down practical arrangements for implementing Regulation (EC) 1049/2001 and Articles 6 and 7 of Regulation (EC) No 1367/2006 of 27 March 2020; Decision of the Executive Director of the European Food Safety Authority Laying down practical arrangements concerning confidentiality in accordance with Articles 7(3) and 16 of Regulation (EC) No 1107/2009, adopted 23 December 2020 – which applies as of 27 March 2021; Decision of the Executive Director of the European Food Safety Authority Laying down practical arrangements concerning transparency and confidentiality, adopted 23 December 2020 which applies as of 27 March 2021.

ABBREVIATIONS AND DEFINITION

Automated steps	Digital steps taken through the PAD tool that facilitate the processing of PAD applications.
Applicant	Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents in EFSA's possession, subject to the principles, conditions and limits defined in the PAD Regulation. EFSA may, subject to the same principles conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.
Aarhus Regulation	Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 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
Initial application or initial PAD application	Initial application for access to documents introduced by an applicant in writing via the PAD tool (by default the preferred option) or by any alternative means such as email or letter.
Confirmatory application (CA)	In the event of an absence of a reply (which shall constitute an implicit decision of total refusal to disclose a document), or a total or partial refusal to disclose a document in response to a PAD application, the applicant may, within 15 working days from the receipt of the decision on the PAD application, make a confirmatory application in writing via the PAD tool (by default the preferred option) or by any alternative means such as email or letter asking the EFSA to reconsider its position.
Confirmatory decision	The decision of EFSA in writing via the PAD tool (as a rule) or by any alternative means such as email or letter, in response to the confirmatory application submitted by the PAD applicant. .
Document	Any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio visual recording) concerning a matter relating to the policies, activities and decisions falling within the EFSA's sphere of responsibility.
Documents held by EFSA	Documents in EFSA's physical or electronic possession in accordance with Article 2(3) of the PAD Regulation and stored in accordance with EFSA's Records Management System.
Third party	Any natural or legal person, or any entity outside EFSA, including the Member States, other EU or non-EU Institutions and bodies and third countries
ED	Executive Director of EFSA
Functional mailbox	EFSA.public.access.to.documents@efsa.europa.eu
LA	Legal and Assurance Services Unit
Management team	ED and the Heads of Department
PAD	Public access to documents
PAD Regulation	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.
PAD tool	IT tool enabling the automation of the PAD processing i.e. through which the PAD handling is operated by the LA Unit and the concerned Unit. By default the PAD tool is the preferred option for the communication steps relating to the processing of PAD applications (incoming and outgoing written communications, exchanges with the concerned Unit and sharing of drafts, etc.)
Personal data	Any information relating to an identified or identifiable natural person e.g. name, signature, private address as defined by Article 3(1) of Regulation (EU) 2018/1725.
Practical Arrangements	Practical Arrangements concerning PAD, notably the Decision of the Management Board laying down practical arrangements for implementing Regulation (EC) 1049/2001 and Articles 6 and 7 of Regulation (EC) No 1367/2006.
Concerned Unit	EFSA Unit(s) holding the document(s) in the scope of the PAD application, in charge of the process relating to the drawing up or receipt of document(s) in the scope of the PAD application.
Initial decision	The decision of EFSA in writing via the PAD tool (by default the preferred option) or by any alternative means such as email or letter in response to the initial application submitted by the PAD



	applicant, either granting full access to the document(s) requested or stating the reasons for total or partial refusal and informing the applicant of his or her right to make a confirmatory application.
Scope of the PAD application	Extent of documents identified as addressing the PAD application in view of its wording.
Relevant staff	The staff members that for hierarchical or other reasons relating to the scope of the PAD application are to be involved in the PAD processing. These might include inter alia member(s) of the management team, and media relation.
Notification	Communication by means of which EFSA informs the third party from which the document(s) in the scope of the PAD application originate of its decision on the accessibility and date of intended release of the document(s) and provides available means of redress against the decision.
Fair solution	Arrangement with the PAD applicant pursuant to Article 6(3) of the PAD Regulation as concerns the processing of the PAD application with a view of reconciling the interests of the applicant with those of good administration.
PROCEDURE	
RECEIPT AND INITIAL STEPS OF THE PROCESSING OF PAD APPLICATIONS	
	Previous SOPs in the process:n/a
Step 1	1.0 Receipt of a PAD application
All Units/Directorates	<p>1.1 The PAD application is received at EFSA in writing via the PAD tool or by any alternative means such as email or letter. In case the PAD application is received via email by another Unit than LA, it shall be forwarded without delay to the PAD functional mailbox or via the PAD tool.</p> <p>1.2 If the specific query received does not fall under the PAD Regulation, it is forwarded via the PAD tool or by email to the Unit in charge of drafting the reply to the query that handles it in accordance with the relevant framework. In this case the procedure ends here. Such cases include requests submitted by physical persons enquiring about their own personal data to be processed by EFSA in accordance with Article 17 of the Data Protection Regulation (EU) 2018/1725 (Right of access by the data subject). It also includes requests for information that are forwarded and dealt with by the Ask EFSA service.</p>
Step 2	2.0 Registration, Acknowledgment and preliminary steps of the processing of the PAD application
LA	<p>2.1 Upon receipt, the PAD application is registered and an automated acknowledgement of receipt is sent to the applicant via the PAD tool. In case the PAD application is not received via the PAD tool, the acknowledgment is sent in writing by any alternative means such as email or letter from the PAD functional mailbox.</p> <p>2.2 LA shares the PAD application with the concerned Unit and in case of a <i>prima facie</i> sensitive request, with the relevant staff.</p>



	<p>2.3 If, upon internal verifications it results already at this preliminary stage that the PAD application is insufficiently precise and/or that an arrangement with the PAD applicant for its processing is to be reached, a request for clarification or a fair solution detailed in step 5 is promptly sent.</p> <p>2.4 The documents in the scope of the PAD application and any information relating to them (for example if they originate from third parties the contact details), are identified by the concerned Unit and shared with LA prior to the meeting organised with the concerned Unit and detailed in Step 3. Should the scope of the PAD application require preliminary discussions, the documents can be (further) identified and shared after the meeting.</p>
ASSESSMENT OF THE PAD APPLICATION WITH THE CONCERNED UNIT(S)	
Step 3	3.0 Assessment of the PAD application and of the accessibility of the document(s) in the scope of the PAD application
LA and concerned Unit(s)	<p>3.1 As a rule, LA organises a meeting with the concerned Unit(s) with a view to assessing the PAD application and in particular the accessibility of the document(s) falling in the scope of the PAD application, unless the PAD application can be processed without a meeting (for example in cases concerning published documents, documents not held by EFSA, documents already disclosed as a result of a previous PAD application, etc).</p> <p>3.2 LA and the concerned Unit(s) assess the accessibility of the document(s) within the scope of the PAD application in light of the provisions of the PAD Regulation, particularly the exceptions to disclosure foreseen therein, having regard to all relevant legislation and settled case law. The assessment on the applicability of the exceptions of the PAD Regulation will consider the interplay of the PAD Regulation with the provisions of the Aarhus Regulation, in particular Article 6 and Article 7 thereof.</p> <p>3.3 Should additional analysis be required, LA organises further follow-up, including meeting(s), with the concerned Unit(s) and/or all relevant staff to finalise the assessment of the PAD application and the accessibility of the document(s) in the scope of the PAD application.</p> <p>3.4 If upon assessment of the PAD application it is concluded that the document(s) in its scope are to be released in full or in part, the documents are prepared for release as described in step 4 and an initial decision is drafted as described in step 7.</p> <p>3.5 If upon assessment of the PAD application it is concluded that no document is to be released, refer to step 7 directly.</p> <p>3.6 If, during the assessment, a clarification, an extension of deadline, or a fair solution is required, refer to step 5.</p> <p>3.7 If the requested document(s) held by EFSA originate(s) from a third party or a Member State, refer to step 6.</p>
Step 4	4.0 Preparation of the document(s) in case of partial or total disclosure (if applicable)
LA and the concerned Unit(s)	4.1 If the document(s) in the scope of the PAD application are to be released in full, LA performs the administrative steps



	<p>concerning the preparation of the document(s) for release (for example, uploading the documents to a disclosure platform, zipping the documents into a single folder, etc.).</p> <p>4.2 If the document(s) in the scope of the PAD application are to be partially released, the document(s) need to be screened and masked in line with the conclusions reached and described in step 3 according to the proportionate distribution of tasks agreed between LA and the concerned Unit(s). LA is in charge of masking personal data. Once the document(s) are all masked, LA performs the administrative steps concerning the preparation of the document(s) for release (for example, uploading the documents to a disclosure platform, zipping the documents into a single folder, etc.).</p> <p>4.3 Should the PAD application be addressed in batches as described in sub-step 5.3, the documents for each batch are prepared in accordance with sub-steps 4.1 or 4.2.</p>
Step 5	5.0 Clarification, extension and fair solution of PAD application (if applicable)
LA and the concerned Unit(s)	<p>5.1 In exceptional cases concerning complex and/or voluminous PAD applications, as foreseen in Article 7(3) and Article 8(2) of the PAD Regulation and implemented in Article 4(7) of the Practical Arrangements, EFSA may extend the deadline to reply by 15 working days in writing via the PAD tool or by any alternative means such as email or letter</p> <p>5.2 If a PAD application is not sufficiently precise, LA sends a request for clarification in accordance with Article 6(2) of the PAD Regulation as implemented by Article 4(3) and (4) of the Practical Arrangements to the PAD applicant in writing via the PAD tool or by any alternative means such as email or letter. The timeframe for replying to the PAD application shall start to run only from the time when EFSA receives the necessary clarifications from the applicant.</p> <p>5.3 In accordance with Article 6(3) of the PAD Regulation as implemented by Articles 4(7) and (8) of the Practical Arrangements, in order to reconcile the interests of the PAD applicant with those of good administration, EFSA may confer with the PAD applicant to find an arrangement for the processing of the PAD application, which is agreeable to them. EFSA may reply to applications for access to documents in batches, request the applicant to provide a priority list of documents and/or further extend time limits to reply to applications for access to documents by taking into consideration the resources involved and striking an appropriate balance with the proper functioning of EFSA.</p> <p>5.4 LA drafts and sends the respective communication(s) to the PAD applicant in writing via the PAD tool or by any alternative means such as email or letter.</p>



Step 6	6.0 Third party or Member States consultation and notification (if applicable)
LA and the concerned Unit(s)	<p>6.1 Pursuant to Article 4(4) of the PAD Regulation, implemented by Article 7(1) of the Practical Arrangements, in case there are document(s) in the scope of the PAD application which originate from a third party, unless it is clear that the document shall or shall not be disclosed, EFSA shall consult the respective third party with a view to assessing whether an exception to disclosure foreseen in the PAD Regulation is applicable. To this effect, LA drafts the consultation and sends it in writing via the PAD tool or by any alternative means such as email or letter.</p> <p>6.2 In accordance with Article 4(5) of the PAD Regulation as implemented by Article 7(2) of the Practical Arrangements, in case the requested document(s) originate from Member State(s), EFSA shall consult with the concerned Member State(s). To this effect, LA drafts the consultation and sends it in writing via the PAD tool or by any alternative means such as email or letter. Member States may request EFSA not to disclose a document originating from them without their prior agreement.</p> <p>6.3 The reply of the third party or Member State is analysed as part of the assessment on the accessibility of the document(s) in the scope of the PAD application described under step 3 including the possibility of additional exchanges in case of total or partial disagreement on the accessibility of document(s) in accordance with the PAD Regulation.</p> <p>6.4 In accordance with Article 7(4) of the Practical Arrangements, if EFSA intends to provide access to document(s) against the explicit opinion of the relevant third party or Member State, EFSA sends a notification of its decision, including the remedies available to oppose any disclosure, in writing via the PAD tool (by default the preferred option) or by any alternative means such as email or letter.</p> <p>6.5 In case the assessment described under step 3 leads to the partial or full release of the document(s) originating from the third party or Member State(s), EFSA may be supported by the third party or Member State(s) in the preparation and in particular the masking of the document(s) referred to under step 4.</p> <p>6.6 When it is clear that the document(s) originating from a third party or Member State shall or shall not be disclosed and a consultation is not required, EFSA shall make every effort to notify the document owner of its intention to disclose (parts of) the document(s) concerned pursuant to Article 7(5) of the Practical Arrangements.</p> <p>6.7 In case the third party or Member State(s) consulted asks for the origin of the PAD application or any other information relating to it, LA handles such a request separately in compliance with the applicable legal framework.</p>



INITIAL DECISION ON PAD INITIAL APPLICATION	
Step 7	7.0 Drafting of the initial decision and dispatch
LA and the concerned Unit(s)	<p>7.1 LA drafts the initial decision in response to the initial application, either granting full access to the document(s) requested or stating the reasons for total or partial refusal. The draft is shared for input and endorsement with the concerned Unit(s) and, in the situations referred to in sub-step 2.2, with the relevant staff. The initial decision shall indicate how to submit a confirmatory application as a means of reviewing the initial decision.</p> <p>7.2 The initial decision is provided to the PAD applicant in writing via the PAD tool or by any alternative means such as email or letter, together with a(n) (electronic) copy of the requested document(s) prepared in accordance with step 4, (in case of partial or total disclosure). Should the PAD applicant opt for consulting the document(s) on the spot, EFSA will make the necessary arrangements to allow consultation.</p>
PAD CONFIRMATORY APPLICATION	
Step 8	8.0 Processing of a PAD confirmatory application
ED	<p>8.1 Confirmatory applications are received in writing via the PAD tool or by any alternative means such as email or letter to EFSA's Executive Director.</p> <p>8.2 If the confirmatory application so requires, (a) meeting(s) between LA and the ED is organised prior to drafting/sending the reply, which might include the concerned Unit(s) and/or the relevant staff.</p> <p>8.3 The procedure described in steps 2 to 6 is repeated depending on the content of the PAD confirmatory application.</p> <p>8.4 In line with sub-step 8.2, LA drafts a PAD confirmatory decision for the validation of the ED, accompanied by relevant background information</p> <p>8.5 The confirmatory decision is sent in writing via the PAD tool or by any alternative means such as email or letter, together with an (electronic) copy of the requested document(s) prepared in accordance with step 4 (in case of partial or total disclosure). Should the PAD applicant opt for consulting the document(s) on the spot, EFSA will make the necessary arrangements to allow consultation.</p>