



IFA response to draft Data Sharing Agreement between Bord Bia & the
Department of Agriculture, Food and the Marine for the purpose of:

*Using existing shared data for the new purpose of introducing best practise
measures relating to the slaughter of young calves*

5th October 2023

1. Introduction

We welcome the opportunity to participate in the consultation process for the new Data Sharing Agreement between Bord Bia and the Department of Agriculture, Food and the Marine (DAFM).

The purpose of this response is to critically assess the Data Sharing Agreement through the lens of current legislative frameworks such as the General Data Protection Regulation (GDPR) and the Irish Data Protection Act which serve as the cornerstone for data protection rights for citizens, including farmers. Our response is aimed at safeguarding these rights while ensuring that the broader objectives of the agreement can be met in a manner that is legal, ethical and reasonable in its impact on the farming community.

There are several critical points arising from this draft Data Sharing Agreement that necessitate attention. These points pertain primarily to the rights and interests of Irish farmers, specifically in the context of the sharing and processing of their personal data for additional purposes without explicit consent and the absence of explicit data sharing agreements with third-party auditors, lack of adequate notification mechanisms, and potential security risks. This submission aims to outline these issues in detail, offering constructive feedback and recommendations for revisions to the agreement.

2. Lack of Explicit Farmer Consent for New Purpose of Data Usage

One of the prominent issues in the agreement is the additional new purpose for which the data will be used. The GDPR's principle of 'purpose limitation' states that personal data must be collected for specific, explicit, and legitimate purposes and not further processed in a way incompatible with those purposes.

In section 8.2 Frequency of the Agreement, it is stated that “AIM data is transferred on an ongoing basis. Bord Bia will intermittently conduct an analysis of the data for the new purpose” and in section 2.3 Details about the Purpose “the new use will involve Bord Bia conducting an analysis of the data to identify farms where a high number of young calves have been slaughtered in a given period. Where a particular threshold has been met, a note will be put on the Scheme member’s record for this issue to be investigated at the next QA Scheme audit.”

No details of this threshold is provided and what the type of analysis that will occur. This analysis could prove to be a material and significant change to the original purpose of the data and more details are required for clarity and transparency:

- what analysis will take place and how will it be conducted;
- what tools, applications and algorithms will be used in the analysis; and
- has a risk assessment been carried out in the case that AI tools and services are used in the analysis including accuracy testing and validation, model hyper-tuning parameters, safeguards to prevent model 'hallucination' and bias, and whether human feedback and decision-making is factored into the performance, evaluation and calibration of the analysis.

This type of detail is necessary as the agreement states in section 2.3. that “the new criterion would only target farmers engaging in the bad practise.” Details are needed on how this targeting will work and if safeguards such as those mentioned above will be used.

The agreement outlines that the data will now be used to identify farms where young calves are being slaughtered, which raises questions about whether the notification and consultation period is sufficient given

the material change in how existing data will now be used, along with the significant impact of other legislation such as the reduction of the Nitrates derogation threshold to 220kg/Ha coming into force in January 2024.

Proposal

An extended period of consultation, awareness and education along with a more participative approach should be considered, wherein farmers are consulted or at least informed about the new purpose of data usage, and their consent is explicitly obtained where possible.

3. Absence of Provisions for Third-Party Data Sharing

There is a lack of provision for third-party data sharing within this Data Sharing Agreement. Quality assurance audits and inspections are conducted by third-parties on behalf of Bord Bia. Section 9.2. Description of Processing states that third-parties are contracted by Bord Bia for the purpose of carrying out audits, which means these third-parties will have access to sensitive data, yet there is no clause in the agreement regarding how these third-parties should handle the data and what compliance measures they are subject to. In section 3.3. it is stated that “The Party/Parties receiving data shall not share the shared personal data with any person who has not been authorised to process such data” but no reference is made as to whether this covers third-parties and under what conditions data sharing takes place.

In section 9.2 Description of Processing, it states that “...audits and inspections will be brought forward and there will also be additional spot audits on top of this based on the QA scheme criterion and that Bord Bia’s auditors are third-parties contracted to provide a service to Bord Bia.” If a farmer’s personal data such as their address and other sensitive personal information are disclosed to third-parties such as contract auditors and inspectors, the lack of robust data sharing agreements covering these third-parties is a critical oversight. GDPR mandates that if data is to be shared with third-parties, adequate safeguards must be in place, including explicit agreements on how the data will be processed and stored. If Data Sharing Agreements exist with these third-parties, reference and access to these agreements should be made available for review for full transparency.

Under the GDPR, data subjects have the right to be informed about how their data is being used, who it is being shared with, and for what purpose. The potential for audits being brought forward or for additional spot audits to take place based on the data analysis mentioned adds another layer of complexity to this. The farmer has a right to be notified in advance about such activities, and arguably, their explicit consent should be obtained. The arrival of third-party auditors and inspectors could pose security risks and could be deemed a significant intrusion into the farmer’s personal lives and property. GDPR focuses heavily on the ‘integrity and confidentiality’ of personal data, ensuring that it is protected against unauthorised or unlawful processing. Knowing someone’s home address and showing up unannounced or without adequate notice could be considered a breach of this principle, especially if no safeguards are put in place.

In section 11.1 Security and Training, a list of technical and organisational measures to protect the shared personal data in their possession against unauthorised or unlawful processing is included. There is no indication if these measures are extended to third-parties who carry out the inspections and audits and collect and record the data.

In section 11.2.1.1 Transmission, we have no indication if the encryption process covers data that is disclosed to third-parties beyond this Agreement.

In section 11.2.2. Party/Parties Receiving Data, the Agreement states that “Only members of the Quality Assurance Team and nominated authorised persons have access to the shared Personal Data.” If there is a Data Sharing Agreement in place with third-parties who carry out the QA audits and assessment and how is the data accessed, processed, stored and managed by these third-parties, it should be included or referenced from this Data Sharing Agreement.

Proposal

Any third-party involvement should be explicitly covered in the Agreement, detailing the responsibilities, compliance measures, and penalties for non-compliance, in line with GDPR regulations.

4. Data Minimisation and Proportionality

While the agreement lists the data to be shared, it's crucial to question whether all this data is strictly necessary for the stated purpose. The GDPR emphasises the principle of 'data minimisation,' meaning that only data that is strictly necessary for the purposes stated should be processed.

Proposal

A thorough review should be conducted to ensure that the data being processed is limited to what is strictly necessary for the stated purpose. Farmers should also be informed about why each piece of data is necessary for the purpose.

5. Accountability and Transparency

While the agreement does provide some measure of accountability by defining each party's role and responsibilities, it falls short in terms of transparency towards the data subjects—the farmers. The Agreement needs to make it explicitly clear how farmers can exercise their rights under GDPR where applicable, such as the right to access, rectification, and erasure of data.

Proposal

A clear and accessible mechanism should be established, published and widely promoted to allow farmers to exercise their GDPR rights. This should be communicated transparently to all farmers involved.

6. Retention Period

The agreement states a retention period of seven to ten years for different types of data based on Bord Bia's Quality Management System Document and Record Control Policy. The question of whether this period is excessively long for the purpose at hand should be asked, and whether the retention period aligns with GDPR's 'storage limitation' principle.

Proposal

A clear rationale for the data retention period should be provided outside of a reference to a record control policy, and it should be ensured that the period is no longer than necessary for the purpose for which the personal data is processed.

7. Data Breach Provisions

While the agreement does talk about acting in accordance with the Data Protection Commission's Breach Notification Process, it lacks specificity. Given that a data breach could severely impact farmers, this is a significant shortcoming.

Proposal

Detailed steps outlining the breach notification process, including timelines and methods of communication to the affected parties, should be incorporated.

8. Implications of Data Sharing under Irish Legislation

Under the Irish Data Sharing and Governance Act 2019, public bodies are allowed to share data for the performance of their functions. However, the principle of fairness and the necessity of public consultation are emphasised. The agreement does not detail any such consultation with farmers on a national scale.

Proposal

In line with the Irish Data Sharing and Governance Act 2019, a public awareness campaign and further extensive briefing session with farmers and their representative bodies should be conducted.

9. Recommendations

While it may align with legal frameworks on the surface, deeper scrutiny reveals significant gaps, particularly in terms of data rights, third-party data sharing, and transparency. These gaps need attention to ensure that the rights and interests of Irish farmers are adequately protected.

Third-Party Agreement

A comprehensive data sharing agreement should be in place with third-parties, covering all aspects of data processing, storage, and deletion, in line with GDPR and be part of this Agreement or referenced within.

Advance Notification and Consent

Farmers should be notified in advance about the possibility of audits being moved forward or additional spot audits being conducted. Ideally, explicit consent should be obtained for this.

Security Measures

Adequate security measures should be in place to protect the data shared with third-parties. This includes stringent background checks for auditors and strong data encryption techniques.

Transparency

The entire process should be transparent, and farmers should have the ability to query or challenge the decision to move forward audits or to conduct additional spot audits.

Legal Review

Given the potential infringement on privacy rights, a legal review might be advisable to ensure full compliance with both GDPR and the Irish Data Sharing and Governance Act 2019.

Ends.