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DIRECTORATE-GENERAL  
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The Director-General

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Elena Sánchez Nicolás

E-mail:  
[ask+request-10322-  
2d92c3c5@asktheeu.org](mailto:ask+request-10322-2d92c3c5@asktheeu.org)

**Subject: Your application for access to documents - GESTDEM 2021/8042**

Dear Ms Sánchez Nicolás,

I refer to your e-mail of 3 December 2021 whereby you make a request for access to documents under Regulation (EC) No 1049/2001, registered under the reference GESTDEM 2021/8042.

By e-mail dated 15 December 2021 (ref. Ares (2021)7755019), you were informed by the Secretariat General of the Commission that your request has been split in two:

- a) GESTDEM reference 2021/8054, attributed to DG MARE, on the first three requests of your e-mail, for which you will receive a separate reply by the competent service, and
- b) GESTDEM reference 2021/8042, attributed to DG ENV, on the fourth request of your e-mail.

As regards the specific documents falling under the reference GESTDEM 2021/8042, you request access to “*All responses of the Spanish government to the Letter of Formal Notice to Spain issued by the EU Commission in November 2018 and to the Reasoned Opinion issued in June 2020 regarding the ongoing infringement procedure of the Nitrates Directive.*”

We have identified the documents you want to obtain:

- a) Replies by Spain to the Letter of Formal Notice:

Letters dated 21 February 2019 (ref. Ares(2019)1287251), 13 June 2019 (ref. Ares(2019)3807993), 31 July 2019 (ref. Ares(2019)5033587), 2 September 2019 (ref. Ares(2019)5545296), 17 October 2019 (ref. Ares(2019)6517239) and 13 February 2020 (ref. Ares (2020)1022774).

- b) Replies by Spain to the Reasoned Opinion:

Letters dated 27 October 2020 (ref. DOC-2020-11-23-625822), 29 April 2021 (ref. DOC-2021-04-29-14062), 27 May 2021 (ref. DOC-2021-05-27-16413), and 6 July 2021 (ref. DOC-2021-07-06-19346).

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

The documents which you seek to obtain relate to an ongoing investigation regarding a possible infringement of EU law (infringement procedure 2018/2250). Disclosure of the documents requested would undermine the purpose of the ongoing investigation. As you may know, on 8 December 2021 the Commission decided to refer Spain to the Court of Justice of the European Union for failing to take sufficient action on nitrates pollution<sup>1</sup>.

Therefore the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to these documents.

The case law of the European Court of Justice has confirmed the application of the above exception in similar situations. In its judgement of 14 November 2013, in joint cases C-514/11 P and C-605/11 P (paragraph 63), the Court held that: *“the disclosure of the documents concerning an infringement procedure during its pre-litigation stage would, in addition, be likely to change the nature and progress of that procedure, given that, in those circumstances, it could prove even more difficult to begin a process of negotiation and to reach an agreement between the Commission and the Member State concerned putting an end to the infringement alleged, in order to enable European Union law to be respected and to avoid legal proceedings”*.

I should also point out that, having carefully examined your requests, I have been unable to identify the existence in this particular case of an overriding public interest that would justify the disclosure of the requested documents. I have also considered the possibility of a partial release of the requested documents, in accordance with Article 4(6) of Regulation 1049/2001. However, the documents are covered in their entirety by the exception under Article 4(2), third indent, and such partial disclosure is not possible.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Brussels  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

Electronically signed

Florika FINK-HOOIJER

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<sup>1</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6265](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6265)