



Brussels
ENV.E.2

Mr Marco Rocha
ask+request-12487-7a73f743@asktheeu.org

Dear Mr Rocha,

Subject: Your application for access to documents – Ref. registered under case number 2023/0503 (Ares(2023)586877)

We refer to your e-mail dated 25 January 2023 in which you make a request for access to documents, registered under the above-mentioned reference number.

You request access to:

1. Any actions from EC regarding the failure of correct Water Framework Directive (WFD) ⁽¹⁾ implementation in Portugal;
2. Any actions regarding the enforcement of arbitrary Groundwater quality standards in the basin management plans.

Your application concerns the following document/documents:

- The letter of formal notice sent by the European Commission to Portugal on 15 February 2023 (DOC-2023-02-15-704648)
- The letters sent by the European Commission to Portugal in the EU PILOT (9798/2020) on 24 November 2020 (reference 3920-540536) and on 14 March 2022 (reference 3922-564362) and the replies from Portugal on 17 February 2021 (reference 3921-542714) and 9 January 2023 (reference 3923-580939).
- The letter sent by the European Commission to Portugal in the EU PILOT (9774/2020) on 16 November 2020 (reference 3920-540273) and the reply from Portugal on 26 January 2021 (reference 3921-541941)

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents ⁽²⁾, I regret to inform you that we cannot grant access to the documents requested, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The documents which you seek to obtain relates to ongoing investigations regarding a possible infringement of EU law (infringement case number 2022/2197 and EU PILOT 9798/2020) concerning Portugal's compliance with Directive 2000/60/EC establishing a

⁽¹⁾ Directive 2000/60/EC establishing a framework for Community action in the field of water policy (Official Journal L 327 , 22/12/2000 P. 0001 - 0073)

⁽²⁾ Official Journal L 145 , 31/05/2001 P. 0043 - 0048

framework for Community action in the field of water policy⁽³⁾ and with Directive 2007/60/EC on the assessment and management of flood risks⁽⁴⁾.

Disclosure of the documents requested would undermine the protection of the purpose of the ongoing investigation in the cases concerned as it would indeed affect the climate of mutual trust between the authorities of the Member State and the Commission, which is required to enable them to resolve the case without having to refer it to the Court of Justice. Therefore, the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001⁽⁵⁾ applies to these documents.

The exception laid down in Article 4(2) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the document. After having examined the matter, the Commission was not able to identify the existence of an overriding public interest, which would justify granting access to the requested document.

I have considered whether partial access could be granted to the document requested, in accordance with Article 4(6) of Regulation 1049/2001, however it is not possible, as the document is entirely covered by the above mentioned exception.

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 the position on the disclosure the documents listed in the Annex to this letter.

Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

by asking for a review via your portal⁽⁶⁾ account (available only for initial requests submitted via the portal account),

or by mail:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by e mail to: sg-acc-doc@ec.europa.eu.

Yours sincerely,

Electronically signed

Florika FINK-HOOIJER

⁽³⁾ Official Journal L 327, 22/12/2000 P. 0001 - 0073

⁽⁴⁾ Official Journal L 288, 6.11.2007, P 0027–0034

⁽⁵⁾ It provides that the "institutions shall refuse access to a document where disclosure would undermine the protection of [...] the purpose of inspections, investigations and audits".

⁽⁶⁾ <https://www.ec.europa.eu/transparency/documents-request>