Subject: Your application for access to documents - GESTDEM 2021/8054

Dear Ms Sánchez Nicolás,

I refer to your e-mail of 03.12.2021 whereby you made a request for access to documents under Regulation (EC) No 1049/2001, registered under the reference GESTDEM 2021/8042. I apologise for the slight delay in replying to your request.

By e-mail dated 15.12.2021 (ref. Ares (2021)7755019), you were informed by the Secretariat General of the Commission that your request had been split in two:

a) GESTDEM reference 2021/8042, attributed to DG ENV, on the fourth request of your e-mail, for which you received a reply on 10.01.2022 (ref. Ares (2022)144579), and

b) GESTDEM reference 2021/8054, initially attributed to DG MARE, on the first three requests of your e-mail. As explained by e-mail dated 11.01.2022, DG ENV has now taken over responsibility for the reply to these first three requests of your e-mail while associating other relevant services within the Commission.

Specifically, you are requesting access to "… documents, e-mails, letters, memos (including all attachments), reports, evaluations, briefings and analysis of any kind which contain the following information:

1. All type of interactions between the regional government of Murcia and the EU commission (including all competent DGs and the Secretariat General) over the state of the lagoon Mar Menor since 2016.

2. All type of communications about Mar Menor between the cabinet of commissioner Virginijus Sinkevicius and the regional government of Murcia, other competent

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1 “4. 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.”
regional/local authorities, the Spanish Institute of Oceanography and the national Ministry for Ecological Transition.

3. All type of communications and data on EU subsidies/grants/and other forms of funding given directly to Spain or the regional government of Murcia since 2016 targeting the Mar Menor lagoon.”

As regards your first request [“All type of interactions between the regional government of Murcia and the EU commission (including all competent DGs and the Secretariat General) over the state of the lagoon Mar Menor since 2016] we have identified the following documents/meetings where this topic has been discussed (exclusively or together with other topics not relevant for your request):

a) DG ENV internal briefing note (ref. Ares(2016)5843154) for a meeting between former Director-General DG ENV with the President of Murcia on 11.10.2016 (document 1).


d) DG ENV internal briefing note (no reference) for a meeting between former Director-General DG ENV with Regional Minister of Agriculture on 01.03.2018 (document 4).

e) DG ENV internal briefing note (no reference) for a meeting between former Director-General DG ENV with the President of Murcia on 08.10.2019 (document 5).

f) Internal briefing note (ref. Briefing Note-1257) for a meeting between Commissioner V. Sinkevičius with the Spanish Minister for Ecological Transition and Demographic Challenge on 19.11.2021 (document 6).

As regards the second request (“All type of communications about Mar Menor between the cabinet of commissioner Virginijus Sinkevicius and the regional government of Murcia, other competent regional/local authorities, the Spanish Institute of Oceanography and the national Ministry for Ecological Transition”), we have identified the following specific documents:


b) Reply dated 03.11.2021, from Commissioner to the President of Murcia (ref. Ares(2021)7037567) (document 8).

Finally, concerning your third request (“All type of communications and data on EU subsidies/grants/and other forms of funding given directly to Spain or the regional
government of Murcia since 2016 targeting the Mar Menor lagoon”), we have identified the following documents and data\(^2\) falling in your request:


b) **Aplicación Práctica “ITI del Mar Menor y contribución de los Fondos FEMP, FEDER y FEADER”**. Regional Government (no reference) (document 10).

c) **Informe sobre avances en las actuaciones para la protección y recuperación del Mar Menor. Febrero 2020.** Regional government (no reference) (document 11).


f) **Decreto n.º 42/2021, de 31 de marzo, por el que se aprueba la 'Estrategia de Gestión Integrada de Zonas Costeras del Sistema Socio-Ecológico del Mar Menor y su Entorno'**, - Boletín Oficial de la Región de Murcia, de 13-04-2021 (ref. Ares(2021)2861043) (document 14).


j) **LIFE19 ENV/ES/000447 LIFE-DESIROWS\(^3\)**. The project aims to eliminate brine from water desalination processes, reaching the crystallization of salts and improving the quality of the reclaimed water for the agricultural sector at an affordable price and achieving zero discharges to the Mar Menor Coastal Lagoon protected area. This is expected to decrease the negative impact of the pollutants (salinity, nitrates, and pathogens) on the ecological equilibrium of fauna and flora in the area (document 18).

k) **LIFE19 NAT/IT/000264 LIFE-TRANSFER\(^4\)**. The project, amongst other objectives, aims to reduce by 80% the area colonised by the invasive green algae Caulerpa prolifera in the Mar Menor lagoon (Spain) (document 19).

l) **LIFE14 ENV/ES/000849. LIFE SIAMEC\(^5\)**. The project demonstrates the anaerobic treatment of municipal and industrial wastewater at ambient temperature in European

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\(^2\) For data on related LIFE projects (either specifically targeted on Mar Menor or on water bodies in the same basin) you can access the information through the links provided.


climates in order to obtain a technology that consumes less energy, produces less biomass and has a lower integrated footprint for wastewater reclamation. This technology overcomes the main drawbacks associated with anaerobic wastewater treatment at low temperature – namely, greenhouse gas emissions and nitrogen removal (document 20).

m) LIFE14 ENV/ES/000150 LIFE STO3RE\(^6\). The project aims to implement an innovative and cost-efficient technology to protect aquatic environments against pollution caused by diffusion of nitrates and micropollutants. The technology will allow conversion of manure and sludge from waste water treatment plants (WWTPs) into a high environmental quality biofertiliser (document 21).

n) LIFE14 ENV/ES/000860 LIFE EFFIDRAIN\(^7\). The project demonstrates an integrated real-time control (RTC) strategy for UDNs and WWTPs to minimise the discharge of pollutants into receiving waters (document 22).

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that documents 2, 3, 7, 8 may be disclosed. You can find a copy attached to this reply.

Documents 18, 19, 20, 21 can also be disclosed and are accessible through the corresponding hyperlinks referred to in footnotes 3 to 7 to this reply.

Documents 9, 10, 11, 12, 13, 14 and 16, originating from the Member State, are already publicly available. Therefore, pursuant to Article 4(4) of Regulation (EC) No 1049/2001, these documents can be disclosed without prior consultation to the third party in order to assess whether an exception in paragraph 1 or 2 is applicable. You can find a copy attached to this reply.

As regards document 15 (also originating from the Member State but not publicly available), on 21.01.2022 (ref. Ares(2022)484042), my services consulted the Member State’s authorities to know whether they oppose disclosure of the concerned document or parts of it, in accordance with Article 4(5) of Regulation (EC) No 1049/2001. Not having received a reply from the Member State in due time, the Commission takes the view that the authorities have failed to provide this institution with any reason objecting the disclosure of this document. Despite the referred Member State failure to reply, my services have carried out a prima facie assessment of this document and concluded that the document is not covered by any of the exceptions of Article 4 of Regulation 1049/2001. Therefore, we can also give access to document 15. You can find a copy attached to this reply. Please note that, with regard to this document 15, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data: the names initials and contact information of Commission staff members not pertaining to the senior management. Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have

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the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Finally, I also have examined the situation of documents 1, 4, 5, 6, and 17 under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents. After careful consideration, I regret to inform you that your application, as regards these documents, cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

   a) Documents 1, 4, 5 and 6 are Commission-internal briefing notes reflecting views and opinions for internal use as part of the deliberations and preliminary consultations within the Commission regarding a possible infringement of EU law (infringement procedure 2018/2250 on which, on 08.12.2021, the Commission decided to refer Spain to the Court of Justice of the European Union for failing to take sufficient action on nitrates pollution). Therefore, the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to these documents. Disclosure of the documents requested would undermine the protection of the purpose of the referred ongoing infringement. Furthermore, it would put in the public domain preliminary internal findings which have not yet been confirmed and which may be rebutted by the entities subject to this infringement; moreover, it may unduly interfere with the contradictory procedure and may undermine the rights of the entities concerned.

In addition, disclosure of these documents would undermine the decision-making process of the Commission in relation to the handling of infringement procedures, as it would reveal preliminary views and policy options which are currently under consideration. More specifically, the scope of the infringement procedure regarding the area of Mar Menor and the different options at stake to tackle the identified breaches of EU law. The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure. Therefore the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 also applies to these documents.

I should also point out that, having carefully examined your request, 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 exceptions under Article 4(2), third indent and Article 4(3) first subparagraph of Regulation (EC) No 1049/2001, and such partial disclosure is not possible.

b) Document 17 concerns an internal e-mail shared between Commission staff and representatives of the Spanish central and regional authorities of Murcia after a meeting held last December 2021 to examine, assess and resolve the problems encountered in the implementation of the 2014-2020 ERDF Operational programme for Murcia; the React-EU branch of the programmes; the ITI Mar Menor; and the objectives of both regional and central authorities as regards the programming period 2021-27.

Disclosure of this confidential internal document would seriously undermine the decision-making process of the Commission as it relates to a matter where the decision has not been taken by the institution. Actually, the official negotiation with the Spanish authorities for the next programming period 2021-2027 (including the ITI) has not started yet. The outcome of that decision-making process has a definite impact, in particular on the follow-up to the operational programmes and the ITI Mar Menor.

The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure. Therefore the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 also applies to these documents.

I should also point out that, 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 document. I have also considered the possibility of a partial release of the requested document, in accordance with Article 4(6) of Regulation 1049/2001. However, the document is covered in its entirety by the exceptions under Article 4(2), third indent and Article 4(3) first subparagraph of Regulation (EC) No 1049/2001, 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

Yours faithfully,

Electronically signed

Florika FINK-HOOIJER