Subject: Your application for access to documents – GESTDEM 2022/3819

Dear Madam,

We refer to your request dated 4 July 2022 in which you make a request for access to documents, registered on 6 July 2022 under the above-mentioned reference number.

You request access to the following documents related to the total allowable catches (TACs) for fish stocks in 2022, for EU only stocks as well as EU/UK shared stocks:

(1) Any records, minutes or notes of meetings/discussions that took place on the 2022 TACs between.
   (i) Commission representatives and Member State representatives for EU only stocks.
   (ii) Commission representatives and Member State representatives for EU/UK shared stocks, and
   (iii) the Commission representatives and UK representatives for EU/UK shared stocks, including any minutes or notes of Council working party/ministerial meetings taken by Commission staff and any internal Commission briefings on the subject.

(2) The letter sent by Member States to the Commission as referred to in the document ST 13844 2021 ADD 1 in the context of southern hake.
We have understood that you do not seek access to documents that are publicly available in the Council’s document register, filed under interinstitutional code 2021/0305(NLE) and 2021/0345(NLE) and such documents are therefore not included in our assessment.

The following documents fall within the scope of your application:

- SI(2021)400 – Note for the attention of Members of the Commission - Coreper I meeting on 10 December 2021 (hereafter ‘document 1’),
- SI(2021)403  Note for the attention of Members of the Commission - 3838 meeting of the Council of the European Union on Agriculture and Fisheries, Brussels, 12-13 December 2021 (hereafter ‘document 2’),
- Letter to C. Vitcheva from A. Villauriz, T. Coelho and E. Banel regarding southern hake, dated November 2021 (hereafter ‘document 3’).

My services have examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and concluded that access cannot be granted to documents 1 and 2 and partially granted to document 3.

Parts of documents 1 and 2 are covered by the exception relating to the protection of the decision-making process of the Commission, provided for in Article 4(3), second subparagraph of Regulation (EC) No 1049/2001. Indeed, the relevant parts of these documents contain the description of the positions of the Member States, as well as the opinions thereon of the representatives of the European Commission, expressed during the negotiating phase, preceding the internal and international negotiations on the adoption of the decision on total allowable catch for 2022. These documents were drafted for internal purposes. The opinions included in these documents only reflect the understanding of the authors of the positions of the Member States expressed during the early stages of the negotiations and they were drafted under the legitimate expectation that they would not be made public. For the negotiations to have a successful outcome, it is essential that there is an atmosphere of mutual trust between the negotiating parties and that the frank exchange of views in a preparatory phase can be protected from public disclosure. Although the decision regarding total allowable catch for 2022 has been adopted by the Council, the process of fixing of fishing opportunities is still ongoing throughout the year, in particular through various amendments and the fixing of fishing opportunities for the next year. Therefore, disclosure of the documents requested would seriously undermine the decision-making process protected by Article 4(3), first subparagraph of Regulation (EC) No 1049/2001.

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in the disclosure of the documents. I note that you do not put forward any elements to demonstrate the existence of any overriding public interest in disclosure of the documents requested. Nor have I, based on my own analysis, been able to identify any elements capable of demonstrating the existence of a public interest that would override the need to protect the independence of the Commission's decision-making process grounded in Article 4(3) of Regulation (EC) No 1049/2001.

Moreover, parts of these documents are also covered by the exception related to the protection of international relations, provided for in Article 4(1)(a) third indent of Regulation (EC) No 1049/2001. As far as the protection of international relations is concerned, the EU Court has acknowledged that the institutions of the European Union
enjoy a wide discretion when considering whether access to a document may undermine the public interest. Some parts of the requested documents reflect considerations on the negotiation strategies used by the European Union in its discussions with international partners on topics that are recurring on a yearly basis in bilateral and multilateral settings. In this context, an atmosphere of trust and confidentiality is a prerequisite for a successful completion of the negotiations with the country/ies concerned in the perspective of agreeing on fishing opportunities. A breach of that trust would jeopardise the relations between the European Union and the countries concerned. Therefore, disclosure of such information would undermine international relations, as outlined in Article 4(1) (a) of Regulation (EC) No 1049/2001.

In addition, the disclosure of documents 1 and 2 is also 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 personal data of the names of Commission staff members not pertaining to the senior management.

We have considered whether partial access could be granted to documents 1 and 2. However, the remaining parts after expunging the confidential information would be either out of scope of your request or meaningless, as reflecting the content of already publicly available information.

With regard to the official record of the exchanges between Member States and the Commission on the topic mentioned in your request, such exchanges are always taking place during Council meetings. Therefore, you may want to address yourself to the Council.

Regarding document 3, a complete disclosure 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 it contains the following personal data: handwritten signatures/abbreviated signatures of natural persons.

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 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 did not express any particular interest to have access to these personal data nor did you put forward 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, 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. Please find enclosed a redacted version of document 3.

Document 3 originates from third parties and is disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual

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property, which may limit your right to reproduce or exploit the released document without the agreement of the originators, who may hold an intellectual property right on it. The European Commission does not assume any responsibility from its reuse.

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 Secretary-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,

(e-Signed)  
Charlina VITCHEVA

Enclosure: Document 3 - Letter from Spain, Portugal and France regarding southern hake, November 2021