EUROPEAN COMMISSION

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C(2023) 7792 final

Madalina Popirtaru
ClientEarth
60 Rue du Trône
3rd floor, box 11
1050 Brussels

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2022/3819

Dear Ms Popirtaru,

I refer to your email of 13 September 2022, registered on the same day, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereafter ‘Regulation (EC) No 1049/2001’).

Please accept our apologies for this late reply.

1. SCOPE OF YOUR APPLICATION

In your initial application of 4 July 2022, registered on 6 July 2022, you requested access to the documents 'related to the 2022 total allowable catches (TACs) for fish stocks in the Northeast Atlantic:

(i)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.

(ii) We also request access to the letter sent by some Member States to the Commission as referred to in the document ST 13844 2021 ADD 1 (https://data.consilium.europa.eu/doc/document/ST-13844-2021-ADD-1/en/pdf) in the context of southern hake (“We propose a roll-over for this stock, as we have supported in a recent letter sent to the Commission by the concerned MS.”).

With regard to category one of your initial application, you clarified in your initial request that you request access to ‘documents relating to both final TACs and provisional EU/UK shared TACs, including to any minutes or notes of Council working party/ministerial meetings taken by Commission staff and any internal Commission briefings on the subject’. You also clarified that ‘[you] do not seek access to emails and correspondence exchanged, nor to the Commission’s legislative proposals for the 2022 TACs, unless such documents are annotated and/or contain negotiation directives. [You] also do not seek access to the documents that are publicly available in the Council’s document register, filed under interinstitutional code 2021/0305 (NLE) and 2021/0345 (NLE) at the date of this request’.

Your initial application was attributed to the Directorate-General for Maritime Affairs and Fisheries (DG MARE hereafter) for handling and reply. In its initial reply of 19 August 2022, DG MARE identified three documents as falling under 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’).

DG MARE refused access to documents 1 and 2 based on the exceptions laid down in the third indent of Article 4(1)(a) (protection of international relations), Article 4(1)(b) (protection of privacy and the integrity of the individual) and Article 4(3) (protection of the decision-making process) of Regulation (EC) No 1049/2001. DG MARE granted wide partial access to document 3 subject to redaction of personal data based on the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of privacy and the integrity of the individual).

In your confirmatory application, you request a review of the position of the Commission with regard to documents 1 and 2. You consider that there was a misapplication of the exceptions in the third indent of Article 4(1)(a) (protection of international relations) and Article 4(3) (protection of the decision-making process) of Regulation (EC)
You consider that the Commission did not state sufficient reasons for applying these two exceptions, as required by Article 296 of the Treaty on the Functioning of the European Union. You underpin your request with detailed arguments, which I will address in the corresponding sections below.

You also request a new examination of the documents falling under the scope of the request. You argue that similar documents are already publicly available and indicate that ‘the documents registered in the Council’s document register as ST 13470 2021 INIT, ST 14359 2021 INIT and ST 14409 2021 INIT, regarding three meetings of the Council’s Working Party on Fisheries Policy on 4 November, 29 November and 2 December 2021, respectively, include amongst the topics discussed “PROPOSAL MAIN TACs 2022”, “EU-UK CONSULTATIONS 2022”, “EU-UK” and “Main TACs for 2022”, which clearly fall within the scope of the Applicant’s request’.

You consider that more documents should have been identified, in particular related to the meetings mentioned on the Council website, and ‘believe that similar records may exist for the above-mentioned meetings on 4 November, 29 November and 2 December 2021 and potential similar meetings related to the 2022 TACs’. You argue that ‘[d]espite references in all three documents [available on the Council website] to participation of Commission representatives, in these meetings, the Decision does not mention the existence of any record, minutes or notes’.

You also ask for pro-active disclosure so that the ‘Requested Documents be made publicly available on the Commission’s documents register, in accordance with Articles 11 and 12 of Regulation 1049/2001 and Article 4 of Regulation 1367/2001’.

In this regard, I observe that the Commission established the Register of Commission Documents in order to comply with its obligations provided for in Article 11 and Article 12 of Regulation (EC) No 1049/2001. The current public register of documents is designed to keep the public informed about the existence of the most important documents adopted by the Commission, primarily legislative documents, or policy documents of general application. Under Article 4 of Regulation (EC) No 1367/2001 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (’the Aarhus Regulation’), several categories of important documents containing environmental information have to be made available and disseminated. The documents at issue in the present case, to the extent that may

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3 You refer to the documents registered in the Council’s document register as ST 13470 2021 INIT, ST 14359 2021 INIT and ST 14409 2021 INIT, regarding three meetings of the Council’s Working Party on Fisheries Policy on 4 November, 29 November and 2 December 2021, respectively, include amongst the topics discussed “PROPOSAL MAIN TACs 2022”, “EU-UK CONSULTATIONS 2022”, “EU-UK” and “Main TACs for 2022”.

4 https://ec.europa.eu/transparency/documents-register/

contain environmental information as you argue, do not fall under any of these categories.

Finally, I note that this confirmatory application does not challenge the redaction of personal information under Article 4(1)(b) of the Regulation performed at initial stage, as you specifically excluded this from your application.

2. **ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

Following your confirmatory application, the European Commission has carried out an assessment of documents 1 and 2 and a renewed search for documents falling within the scope of your request.

As regards documents 1 and 2, I can inform you that partial access can be granted to the information in which you are interested. In accordance with the case-law of the Court of Justice, ‘a European Union institution may take into account cumulatively more than one of the grounds for refusal set out in Article 4 of Regulation No 1049/2001 when assessing a request for access to documents held by it’\(^6\). The limited undisclosed parts of the documents 1 and 2 require protection under the exceptions provided for in the third indent of Article 4(1)(a) (protection of international relations), Article 4(1)(b) (protection of privacy and the integrity of the individual) and Article 4(3) (protection of the decision-making process) of Regulation (EC) No 1049/2001. Some parts of the two documents have been redacted as they fall out of the scope of your request.

Please note that the documents only reflect the understanding of the author of the positions of the Member States expressed during the negotiations.

Furthermore, following the renewed search for documents, the European Commission identified the following documents as falling within the scope of your request, in addition to the documents identified at initial stage:

- Commission services non-paper on bilateral EU-UK, trilateral EU-UK-NO and bilateral EU-NO consultations on fishing opportunities for 2022, transmitted to the Council on 18 October 2022, reference number Ares(2023)6578381 (‘document 4’ hereafter).


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As regards these two newly identified documents, I can inform you that partial access can be granted to them. Access to the redacted parts of these documents has to be refused on the basis of the exceptions laid down in the third indent of Article 4(1)(a) (protection of international relations) and Article 4(3) (protection of the decision-making process) of Regulation (EC) No 1049/2001.

The detailed reasons are set out below. Please note that some parts of the documents have been redacted because they fall outside the scope of your request.

I can also inform you that other documents that may be useful to you are published and can be consulted on the Commission dedicated website.

2.1. Protection of international relations

The third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of […] the public interest as regards […] international relations […]’.

In your confirmatory application, you consider that the Commission has misapplied Article 4(1)(a) of Regulation (EC) No 1049/2001. You argue that DG MARE in its initial reply, provides only a ‘very broad and vague justification which cannot support the application of the exception from disclosure provided under Article 4(1)(a) 3rd indent of Regulation 1049/2021’ and ‘only invokes hypothetical risks as to the impact on the relations with “international partners” without providing any concrete explanations as to what reasonably foreseeable effect the release of any of the specific Requested Documents would have. The Commission merely makes general and vague references which could apply to any context in which the EU is negotiating internally on matters that have implications for third parties’.

You consider that the Commission has ‘clearly failed to demonstrate that disclosure would specifically and actually undermine the EU’s international relations and that the risk is reasonably foreseeable and not purely hypothetical’.

As far as the interests protected by virtue of Article 4(1)(a) of Regulation (EC) No 1049/2001 are concerned, the Court of Justice has confirmed that it ‘is clear from the wording of Article 4(1)(a) [of Regulation (EC) No 1049/2001] that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests’.

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8 Judgement of the Court of Justice of 1 February 2007, C-266/05 P, Sison v Council, EU:C:2007:75, paragraph 46.
The Court of Justice stressed in the *In ‘t Veld* ruling that the institutions ‘must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the exceptions provided for in Article 4(1)(a) of Regulation 1049/2001] could undermine the public interest’

Consequently, ‘the Court’s review of the legality of the institutions’ decisions refusing access to documents on the basis of the mandatory exception [...] relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers’

Moreover, the General Court ruled that, as regards the interests protected by the above-mentioned Article, ‘it must be accepted that the particularly sensitive and fundamental nature of those interests, combined with the fact that access must, under that provision, be refused by the institution if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complexity and delicacy that call for the exercise of particular care. Such a decision requires, therefore, a margin of appreciation’

This was further confirmed by the Court of Justice.

Parts of documents 1, 2, 4 and 5 have been redacted in order to protect international relations with the United Kingdom. Document 4 concerns the “Commission services non-paper on bilateral EU-UK, trilateral EU-UK-NO and bilateral EU-NO consultations on fishing opportunities for 2022” and is a mix of the three consultations mentioned in the title, including strategic linkages among the three. Document 5 is a complement to document 4, concerning some stocks covered in EU-UK annual consultations which receive late scientific advice; therefore, the same reasoning as above applies. The redacted parts in documents 1, 2, 4 and 5 concern negotiating strategies used by the Commission with the UK in negotiations that are recurrent, on a yearly basis. The negotiations are carried out under Article 498 of the EU-UK Trade and Cooperation Agreement, to agree annual TAC level for the fish stocks covered in Annex 35 of the TCA (76 stocks). While the bulk of the stocks is negotiated in November-December, some stocks (sandeel, sprat, Norway pout) are negotiated during the year due to the timing of scientific advice. The scientific advice for the fish stocks can be different from

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one year to another, leading to setting of different values of TACs and different opening positions in the negotiations.

While some information in these documents can be released, disclosing any more of the redacted passages would put in the public domain Commission internal and Member States’ policy considerations related to negotiating strategies used by the Commission with the UK on topics that are recurrent on a yearly basis. Disclosing the negotiating strategies and all the considerations behind them could undermine future negotiations on fishing opportunities and jeopardise the atmosphere of trust and confidentiality which is essential to these annual discussions.

The disclosure of redacted passages of the documents concerned would put in the public domain the EU’s, Member States’ and in some cases UK’s, negotiating positions and related internal policy considerations. Disclosure of the redacted parts would ultimately harm EU interests, if the redacted parts were made public and were used to counter argument our future negotiating positions. Should such information enter the public domain, even after the conclusion of the negotiations with UK, it could be used to bring undue pressure on the Commission, unduly limit the room for manoeuvre of the EU on the international stage, and jeopardise the EU’s negotiation position.

I would like to remind you that the documents released under Regulation (EC) No 1049/2001 become available to the public at large (‘erga omnes’), and not only to the applicant who had requested them.

In this regard, the General Court found that ‘it is possible that the disclosure of European Union positions in international negotiations could damage the protection of the public interest as regards international relations’ and ‘have a negative effect on the negotiating position of the European Union’ as well as ‘reveal, indirectly, those of other parties to the negotiations’14. Moreover, ‘the positions taken by the Union are, by definition, subject to change depending on the course of those negotiations and on concessions and compromises made in that context by the various stakeholders. The formulation of negotiating positions may involve a number of tactical considerations on the part of the negotiators, including the Union itself. In that context, it cannot be precluded that disclosure by the Union, to the public, of its own negotiating positions, when the negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating capacity of the Union’15.

There is therefore a reasonably foreseeable and not purely hypothetical risk that the disclosure of the parts redacted under this exception would undermine the international relations between the EU with UK.

Consequently, the Secretariat-General concludes that the redacted parts of documents 1, 2, 4, and 5 need to be withheld under the exception laid down in the third indent of

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15 Id., paragraph 125.
Article 4(1)(a) of Regulation (EC) No 1049/2001 and that access must be therefore refused on that basis.

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of […] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data’.

In its judgment in Case C-28/08 P (Bavarian Lager)\(^{16}\), the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data\(^{17}\) (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC\(^{18}\) (hereafter ‘Regulation (EU) 2018/1725’).

However, the case-law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with […] [the Data Protection] Regulation’\(^{19}\).

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person […]’.

As the Court of Justice confirmed in Case C-465/00 (Rechnungshof), ‘there is no reason of principle to justify excluding activities of a professional […] nature from the notion of private life’\(^{20}\).

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\(^{19}\) European Commission v The Bavarian Lager judgment, cited above, paragraph 59.

\(^{20}\) Judgment of the Court of Justice of 20 May 2003, Rechnungshof and Others v Österreichischer Rundfunk, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.
The requested documents 1 and 2 contain personal data such as the names, initials, functions of persons who do not form part of the senior management of the European Commission.

The names of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if “[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (ClientEarth), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data. This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your confirmatory application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subjects’ legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

21 European Commission v The Bavarian Lager judgment, cited above, paragraph 68.
Consequently, the Secretariat-General concludes 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 the disclosure of the personal data concerned.

2.2. Protection of the decision-making process

The second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 provides that ‘[a]ccess to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure’.

In your confirmatory application, you argue that, I quote, ‘The requested documents constitute "legislative documents" within the meaning of Regulation 1049/2001 as they are documents elaborated in the process of establishing the total allowable catches (TACs) for EU stocks only, as well as for EU/UK shared fish stocks in 2022, which imposes legally binding obligations for the Member States.’ Those documents ‘directly relate to the adoption of the 2022 TAC Regulation (Council Regulation (EU) 2022/109 of 27 January 2022, as amended by Council Regulation (EU) 2022/515 of 31 March 2022), they are therefore to be considered legislative documents’.

Furthermore, you indicate that the documents requested ‘contain "environmental information" within the meaning of Article 2(1)(d) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision- making and Access to Justice in Environmental Matters to Community institutions and bodies (the ‘Aarhus Regulation’).’ They ‘contain information about the fishing opportunities for 2022 adopted through the TAC Regulation, which regulates the exploitation of fish stocks and other marine species in the Northeast Atlantic. Therefore, they are information on measures that have a direct impact on biological diversity in coastal and marine areas. As such, the Requested Documents contain "environmental information" within the meaning of the Aarhus Regulation’.

You also contest the application of the exception provided for in Article 4(3) of Regulation (EC) No 1049/2001 to documents 1 and 2. You consider that, I quote, ‘the Decision does not appear to be based on a specific and individual examination of each of the Requested Documents and failed to identify a serious risk of undermining the decision-making process to the applicable legal standard’. Moreover, you argue that ‘both processes regarding the 2022 TACs, for EU only and EU/UK shared fish stocks has been finalised through the adoption of the 2022 TAC Regulation (Council Regulation (EU) 2022/109 of 27 January 2022, as amended by Council Regulation (EU) 2022/515 of 31 March 2022’).
The relevant undisclosed parts of documents 1 and 2 contain 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 adoption of the decision on total allowable catch on 27 January 2022.

These documents were drafted for internal purposes and as part of the preliminary consultations within the European Commission. 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 of Commission officials can be protected from public disclosure.

Documents 4 and 5 concern the Commission approach to the EU’s position in the bilateral negotiations EU-UK for 2022 fishing opportunities. They concern negotiating strategies used by the Commission with the UK on topics that are recurrent on a yearly basis.

Documents 4 and 5 are produced by the Commission and intended for the use of the Council, to further specify the Union positions in negotiations with the UK in accordance with Article 2 of Council Decision (EU) 2021/1875. The non-papers, as discussed and ultimately endorsed in the Council, basically constitute the Commission mandate to negotiate with the UK. The outcomes of the negotiations are then laid down in a Written Record and translated in a Commission proposal to the Council for the setting of fishing opportunities for the subsequent year under Article 43(3) of the Treaty on the Functioning of the European Union. While this exercise is conducted every year, the process is also repetitive and the Council Regulation regarding total allowable catch is subject to in-year amendments.

Although the decision regarding total allowable catch for 2022 has been adopted by the Council on 27 January 2022, the process of fixing of fishing opportunities is still ongoing throughout the years, in particular through various amendments and the fixing of fishing opportunities for the next year. Therefore, full disclosure of the redacted parts of the documents requested would seriously undermine the decision-making process protected by Article 4(3), first subparagraph of Regulation (EC) No 1049/2001.

With regard to the official record of the exchanges between Member States and the Commission on this topic, such exchanges are always taking place during Council meetings. Therefore, you may want to consult the comprehensive report of the Council proceedings, which is now publicly available.

23 Council Decision (EU) 2021/1875 of 22 October 2021 concerning the position to be adopted on behalf of the Union in the annual consultations with the United Kingdom to agree on total allowable catches, OJ L 378, 26.10.2021, p. 6.

Public disclosure showing the position of the Member States and the Commission would unsettle the functioning of the annual consultations and put under strain the trust relationship between Member States and the European Commission. It would expose the decision-making process to further external pressure and thus undermine the decision-making process for the setting of fishing opportunities.

I would like to recall that, under Article 3 of Regulation (EC) No 1367/2006, Regulation (EC) No 1049/2001 applies to any request by an applicant for access to environmental information held by the institutions and bodies. Indeed, as far as requests for environmental information are concerned, in accordance with Article 6(1) of Regulation (EC) No 1367/2006, the grounds for refusal provided for in Article 4 of Regulation (EC) No 1049/2001 shall be interpreted in a restrictive way and public interest in disclosure shall be taken into account as regards all the exceptions.

However, neither Regulation (EC) No 1367/2006, nor Regulation (EC) No 1049/2001 provide for an automatic disclosure of any type of environmental information.

Against this background, it can be concluded that the disclosure of the redacted parts of the documents would seriously undermine the decision-making process of the European Commission within the meaning of the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

3. **OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

You consider that ‘the specific circumstances of this case are such that the need for the public to have access to the Requested Documents at the current moment is so pressing as to justify their disclosure. The annual decision-making procedure of fixing the fishing limits has far-reaching consequences on the environment as well as on those depending on the sustainable use of marine living resources. The EU has already missed the legally binding deadline to end overfishing by achieving the Maximum Sustainable Yield (MSY) exploitation rate by 2020 at the latest for all stocks, as required by Art. 2(2) of the CFP Basic Regulation. Overfishing continues to be a major issue, with many stocks outside safe biological limits, and despite some long-term progress, many TACs are still set above the best available scientific advice. It is therefore in the public interest of EU citizens to know the positions that their democratically elected leaders take at the EU level and the opinions of the Commission’s representatives on this matter and according to Article 4(3) this public interest should be deemed as overriding the need to protect the closed decision-making process regarding TACs for 2022’.

You argue that ‘the fact that the Requested Documents contain to environmental information required the Commission to take into account the public interest served by disclosure, as provided by Article 6(1) second subparagraph of Aarhus Regulation’.
Consequently, in your view, an overriding public interest warrants the disclosure of the relevant parts of the four documents. This interest is based on a general need for public transparency linked to the importance of the subject matter, reinforced by the fact that, in your opinion, the undisclosed information constitutes environmental information within the meaning of Regulation (EC) No 1367/2006.

Please note, however, that no overriding public interest in disclosure of environmental information can automatically be derived from the provisions of Article 6 of Regulation (EC) No 1367/2006 as regards the exception set out in Article 4(3) of Regulation (EC) No 1049/2001. In case of the latter exception, Article 6 merely requires interpreting the grounds for refusal restrictively whenever the information requested relates to emissions into the environment, taking into account the public interest served by disclosure and whether the information requested relates to emissions to the environment.

The information included in the undisclosed parts of the documents, as explained above, are the positions of the Member States and of the representatives of the European Commission. It follows that it may not be considered as information relating to emissions into the environment in the sense of Article 6 of Regulation (EC) No 1367/2006.

As regards your general reference to the alleged existence of a general need for public transparency in this case, I would like to refer to the judgment in the Strack case\textsuperscript{25}, where the Court of Justice ruled that in order to establish the existence of an overriding public interest in transparency, it is not sufficient to merely rely on that principle and its importance, but that an applicant has to show why in the specific situation the principle of transparency is in some sense especially pressing and capable, therefore, of prevailing over the reasons justifying non-disclosure\textsuperscript{26}.

It is the Secretariat-General’s view that such a pressing need has not been substantiated in this case. Whilst the Secretariat-General understands that there can be a public interest in the use of the marine resources and in obtaining access to the undisclosed information included in the documents in question, the Secretariat-General considers in this case that any possible public interest in transparency cannot outweigh the public interest in protecting the decision-making process falling under the exception provided for in the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

In consequence, the Secretariat-General considers that in this case there is no overriding public interest that would outweigh the interest in safeguarding the decision-making process falling under the exception provided for in Article 4(3) of Regulation 1049/2001.


\textsuperscript{26} \textit{Strack v Commission} judgment quoted above, paragraph 129.
4. MEANS OF REDRESS

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Ilze Juhansone
Secretary-General

Enclosures: [4]