



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

The Director-General

Access Info Europe
Patricia González

ask+request-12362-ba525b51@asktheeu.org

Dear Ms González,

Subject: Your application for access to documents – EASE 2022/7379

We refer to your e-mail dated 21/12/2022 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number. We also refer to our e-mail of 20/01/2023 (Ref. Ares(2023)457009) with which we extended the deadline to treat your request by fifteen working days, in accordance with Article 7(3) of Regulation (EC) No 1049/2001.

You request access to notifications received (2008 – 2022) from flag States in accordance with Article 20 of the Council Regulation (EC) No 1005/2008 (hereinafter “EU IUU Regulation”).

I consider your request to cover documents held up to the date of your initial application, i.e. 21/12/2022.

Your application concerns the following documents: flag States notifications received in line with Article 20 of the EU IUU Regulation from 93 non-EU countries. In accordance with Article 22(2) of the said Regulation, the Commission has published the list of these countries and their notified authorities on its website¹ and in the *Official Journal of the EU* (hereinafter “OJ”)².

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 exceptions to the right of access laid down in Article 4 of this Regulation.

The documents which you seek to obtain contain sensitive information necessary for official controls carried out by Member States’ competent authorities in accordance with Articles 16 and 17 of the EU IUU Regulation, as well as personal data, such as names of flag States officials, their functions and hand-written signatures.

Disclosure of the requested documents would undermine the protection of:

- **the purpose of inspections, investigations and audits**, as putting the details of the flag States authorities in the public domain would negatively affect the effective implementation of the catch certification scheme provided for in Chapter III of the EU IUU Regulation. In accordance

¹ https://oceans-and-fisheries.ec.europa.eu/fisheries/rules/illegal-fishing_en

² https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2022.404.01.0008.01.ENG

with the Annex III to the said Regulation, the flag States notifications contain the official seal prints of the flag States authorities as well as the sample forms of catch certificates.

In accordance with Article 22(2) of the said Regulation, the list of the flag States and their authorities is published on the Commission website and in the OJ as explained above, while (all other) details of these authorities are available (only) to Member States authorities responsible for the validation and verification of catch certificates.

In accordance with Article 16 of the said Regulation, the Member States competent authorities must, based on risk management, check the catch certificates in light of the information provided in the flag States notifications. If those competent authorities question the authenticity of the catch certificate itself, of the validation seal or of the signature of the relevant authority, they must carry out verifications in accordance with Article 17(4) of the said Regulation.

Therefore, the details of the flag States authorities which are not published are essential for checks and verifications of catch certificates that Member States authorities must carry out upon imports of fishery products into the EU. A public disclosure of these details (official seal prints, sample forms, addresses and contact details of legal persons, names and hand-written signatures of attesting officials) would facilitate their abuse for fraudulent purposes i.e. falsification and production of forged catch certificates. The Commission is aware of several cases where forged certificates have accompanied the import consignments.

Based on the foregoing, we consider that there is a real and non-hypothetical risk that public access to the above-mentioned details from the flag States notifications would undermine the very purpose of inspections, investigations and audits i.e. the attainment of the main objective of the EU catch certification scheme - the prohibition of importation of fishery products obtained from IUU fishing. Therefore, the exception laid down in Article 4(2), third indent, of Regulation (EC) No 1049/2001 applies to these documents.

- **protection of privacy and the integrity of the individual**, as the flag States notifications contain the names of natural persons (flag States officials) and their handwritten signatures. Therefore, the exception laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001 applies to these documents. Article 9(1)(b) of the Data Protection Regulation³ 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 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 the Regulation, 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

³ 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, OJ L 295, 21.11.2018, p. 39.

reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

We have considered whether partial access could be granted to the documents requested, and come to the conclusion that the remaining parts (other than those already published as explained above) after expunging the confidential information according to the above-mentioned exceptions would be meaningless.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We note that you do not put forward any elements to demonstrate the existence of an overriding public interest in disclosure of these parts of the requested documents, nor have we been able to identify any elements capable of demonstrating the existence of a public interest that would override the need to protect the above named purposes.

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 Bruxelles

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

Yours faithfully,

Kestutis SADAUSKAS

on behalf of Charlina VITCHEVA

