



EUROPEAN COMMISSION

Brussels, 3.8.2017  
C(2017) 5612 final

Ms Anne FRIEL  
Ms Flaminia TACCONI  
ClientEarth  
Avenue de Tervueren 36 Box 17  
Brussels 1040

**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT  
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2017/2589**

Dear Ms Friel,

I refer to your message of 12 June 2017, registered on 23 June 2017, in which you submit 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<sup>2</sup> ('Regulation 1049/2001').

**1. SCOPE OF YOUR REQUEST**

In your initial application of 2 May 2017, addressed to the Commission's Directorate-General for Maritime Affairs and Fisheries (DG MARE), you requested access to *information regarding by-catch provisions in total allowable catches (TACs) of EU fish stocks in the Northeast Atlantic 2013 – 2017*.

You pointed out in this regard that you wished *access to all documents containing scientific information and/or socio-economic information connected to the Commission's proposal for by-catch provisions in the TACs identified above from 2013 - 2017(3), as well as information on the quantities of fish (by stock) landed under these provisions each year from 2013 to 2016, and on how these by-catch limits have been adhered to*.

---

<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

By letter of 22 May 2017, DG MARE provided you with background information on the bycatch provisions in force. It also provided you aggregated statistics on the stocks included in the bycatch provisions for the period 2013 – 2016.

Through your confirmatory application, you request a review of the position of DG MARE by questioning whether there are further documents falling within the scope of your request, which have not yet been identified and provided by DG MARE.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply provided by the relevant service at the initial stage.

I would like to address the comments in your confirmatory application, by which you contest DG MARE's identification of documents falling within the scope of your request.

You note that no list of documents falling under your request was provided. You also point out in this regard that the statistics provided by DG MARE with the initial reply would appear to have been created *for the specific purpose of replying to your request or is an extract of a larger document*.

Indeed, I would like to inform you that no list of documents was created, because the data requested in your application and provided by DG MARE was extracted by the Commission from the Data Warehouse available only via the Commission's internal portal: the *Fisheries Data Exchange System (FIDES)*.

The Catch Reporting System contains aggregated monthly catch data provided by the Member States and checked by the set of validation rules. Based on this data DG MARE manages and monitors the quota uptake of the Member States, but also prepares various catch reports to its international partners. Data is reported under the Article 33 of the Control Regulation (1224/2009)<sup>3</sup>. Due to the strict data usage rules, the database is internal and not publicly available. For the public, the Eurostat database relating to fisheries can be consulted on the website of the European Statistical Office (Eurostat)<sup>4</sup>.

In this context, I would like to point out that the question regarding the possible status of information stored in databases as a *document* within the meaning of Regulation 1049/2001 has already been subject to an assessment by the General Court, which in its ruling in *Type* case T-214/13 established that (...) *in the event of an application for access designed to have the Commission carry out a search of one or more of its databases using search criteria specified by the applicant, the Commission is obliged, subject to the possible application of Article 4 of Regulation No 1049/2001, to accede to*

---

<sup>3</sup> Official Journal L 343, 22.12.2009, p. 1-50

<sup>4</sup> Section on Agriculture, Forestry and Fisheries could be consulted here: <http://ec.europa.eu/eurostat/data/database>

*that request, if the requisite search can be carried out using the search tools which it has available for the database in question*<sup>5</sup>.

With this judgement, the General Court confirmed the previous judgment in the *Dufour* case T-436/09, where the Court stated that: (...) *anything that can be extracted from a database by means of a normal or routine search may be the subject of an application for access* (...) <sup>6</sup>.

Finally, in the most recent judgment of the Court in Case C-401/15 P, *Typke v Commission*, the Court confirmed that *all information which can be extracted from an electronic database by general use through preprogrammed search tools, even if that information has not previously been displayed in that form or ever been the subject matter of a search by the staff of the institutions, must be regarded as an existing document*<sup>7</sup>.

In this specific case, DG MARE extracted the statistics provided to you from the FIDES database, using the codes that identify the specific bycatch provisions. It did so specifically with the purpose of satisfying your request.

In your confirmatory application, you also request access to documents or information about *the meaning of blanc cells in the statistic provided*. I would like to clarify in this regard that the blanc spaces mean that no catch data were provided for the corresponding stock in a given year.

Finally, in your confirmatory request you ask for Member States' data from 2014 to 2016/2017 on their catches within the bycatch provisions.

I note that you already asked access to information sent by the Member States on bycatch provisions in 2017 Total Allowable Catches (TACs). Following that request, DG MARE replied on 24 March 2017 that the Commission had not yet received any data from Member States following the Council meeting on 12-13 December 2016<sup>8</sup>.

I note in this respect that you did not, in your initial request forming the subject of your confirmatory request, ask for Member States' data on catches within the bycatch provisions, but only for the stock (...*quantities of fish (by stock) ... each year from 2013 to 2016*). Therefore, I consider your request for the Member States' data on their catches in 2014-2016/2017 to be a new request, which cannot be handled at the confirmatory level, but should first be addressed to DG MARE for initial treatment. Therefore and as regards this request, the Commission has registered a new initial application for access under GestDem reference 2017/4148. The handling of this request is on-going.

---

<sup>5</sup> Judgment of the General Court of 2 July 2015 in case T-214/13, *Typke v Commission*, (ECLI:EU:T:2015:448), paragraph 56.

<sup>6</sup> Judgement of the General Court of 22 October 2011 in case T-436/09, *Dufour v European Central Bank*, (ECLI:EU:T:2011:634), paragraph 153.

<sup>7</sup> Judgement of the Court of Justice of 11 January 2017, *Typke v Commission*, ECLI:EU:C:2017:5, paragraph 37.

<sup>8</sup> Ref: ARES(2017)1593443 of 24 March 2017.

Finally, concerning the part of your request covering *documents containing scientific information and/or socio-economic information connected to the Commission's proposal for by-catch provisions in the TACs*, please note that documents falling within this part of your request are publicly available and can be consulted on the website of the International Council for the Exploration of the Sea (ICES)<sup>9</sup>.

### **3. MEANS OF REDRESS**

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  
Alexander ITALIANER  
Secretary-General*



---

<sup>9</sup> <http://www.ices.dk/>