



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

The Director General

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**Subject: Your application for access to documents – GESTDEM 2022/3044**

Dear Mr Teffer,

We refer to your e-mail of 25 May 2022 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number, and to our e-mail of 17 June 2022 (Ref. Ares(2022)4480414) with which we extended the deadline to treat your request by 15 working days, in accordance with Article 7(3) of Regulation (EC) No 1049/2001.

We also refer to our letter dated 29 June 2022 (Ref. Ares(2022)4754159) by means of which we proposed to narrow down the scope of your request to those documents corresponding to the category “infringement procedure” pursuant to Article 6(3) of Regulation (EC) No 1049/2001, with regard to which you confirmed your agreement on the same day.

### **1. Scope of your request**

In your application, you request access to all documents related to the infringement case “INFR(2019)4002”, relating to the Netherlands' failure to comply with Union law on the use of electric fishing by the Netherlands.

Further to the fair solution proposal mentioned above, your application concerns the following documents:

- **Document 1:** Inter-service consultation note of 05/12/2018
- **Document 1.1:** Draft letter of formal notice attached
- **Document 1.2:** Fiche NIF attached

- **Document 2:** Legal Service note of 20/12/2018
- **Document 2.1:** Draft letter of formal notice attached
- **Document 3:** Legal Service email of 14/01/2019
- **Document 3.1:** Fiche NIF attached
- **Document 4:** Note to file of 06/06/2019
- **Document 5:** Inter-service consultation note of 18/06/2021
- **Document 5.1:** Fiche INFR(2019)4002 attached
- **Document 6:** Legal Service reply to Inter-service Consultation of 06/07/2021
- **Document 7:** Fiche INFR(2019)4002 of 1/04/2022
- **Document 8:** Positive opinion Legal Service of 4/04/2022

## 2. Assessment under Regulation (EC) 1049/2001

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:

- Document 1.2 can be **fully disclosed**;
- Documents n. 1, 2, 3 and 3.1, 4, 5 and 5.1, 6, 7 and 8 can be **partially disclosed**;
- Documents n. 1.1 and 2.1 **cannot be disclosed**.

Consequently, some parts of the requested documents have been redacted as their disclosure is prevented by an exception to the right of access laid down in Article 4 of Regulation (EC) 1049/2001. Please note that the redactions in the first page of Document 5 (title and first paragraph) correspond to parts that fall outside of the scope of your request. You can find a copy of the requested documents attached to this letter.

Please find the detailed reasons justifying this conclusion under points 2.1 and 2.2 below:

### 2.1 Protection of privacy and the integrity of the individual

A complete disclosure of **Document 1, Document 2, Document 3 and 3.1, Document 4, Document 5 and 5.1, Document 6, Document 7 and Document 8** 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 of Commission staff members not pertaining to the senior management.

Article 9(1)(b) of the Data Protection Regulation<sup>1</sup> 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.

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<sup>1</sup> 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.

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.

## **2.2. Commission's decision-making process**

The disclosure of **Documents 1.1 and 2.1** (and a complete disclosure of **Documents n. 2 and 4**) is prevented by the exception to the right of access foreseen by the second paragraph of Article 4(3) of Regulation 1049/2001, according to which “access 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”.

The above-mentioned **Documents 1.1 and 2.1** (and the redacted parts of **Document n. 2 and 4**) contain the preliminary assessment and views of the Commission services on a possible breach of EU Law by the Netherlands in preparation of a College decision, which in the end never took place, as the documents were never submitted to the College. They thus do not reflect the position of the institution, but merely the perception of its services as part of an internal reflection on the case.

Their disclosure, including as the documents contain elements of policy strategy in the field of enforcement, would seriously undermine the Commission's decision-making process in the field, which depends on a thorough and open internal exchange of positions between Commission services in the run-up to any Commission decision.

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the document. I have examined whether there would be an overriding public interest in disclosure, but I have not been able to identify it.

## **3. Disclaimer**

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

## **4. Confirmatory application**

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](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

(e-Signed)  
Charlina VITCHEVA  
Director-General

Enclosures:

- **Document 1:** Inter-service consultation note of 05/12/2018
- **Document 1.2:** Fiche NIF attached
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