



EUROPEAN COMMISSION

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Greenpeace European Unit

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2015/5711**

Dear [REDACTED],

I refer to your letter of 20 January 2016, 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 documents² (hereafter ‘Regulation (EC) No 1049/2001’).

In the framework of this application, you maintained your request for access to various documents pertaining to an allegedly irregular shipment of live bluefin tuna from Tunisia to Malta and subsequent caging and/or slaughtering of tuna in Malta on 20, 21 and 22 March 2010³.

¹ Official Journal L 345 of 29 December 2001, p. 94.

² Official Journal L 145 of 31 May 2001, p. 43.

³ This request related to two of Greenpeace’s previous applications of 14 April 2010 and 19 April 2012, as well as subsequent enquiries by the European Ombudsman into two complaints lodged by the former against the European Commission.

Moreover, you requested a review of the initial reply of 5 November 2015 of the Directorate- General for Maritime Affairs and Fisheries, insofar as it refused access to the documents originating from the Maltese authorities, on the basis of Article 4(1)(a), third indent, Article 4(2), first indent and Article 4(3), second subparagraph, read in conjunction with Article 4(5) of Regulation (EC) No 1049/2001 and Article 113 of Regulation (EC) No 1224/2009⁴.

I further refer to the confirmatory decision of 13 July 2016 by which the European Commission decided, among other things, to publicly disclose the relevant documents originating from the Maltese authorities (namely, documents listed under 112-230), notwithstanding the opposition of the latter.

The operation of this decision was suspended by order of the President of the General Court on 25 August 2017, pursuant to Articles 278 and 279 read in conjunction with Article 256(1) of the Treaty on the Functioning of the European Union, following the lodging of an application for interim measures by the Republic of Malta⁵.

On 3 May 2018, the General Court handed down a judgment whereby it annulled, on the basis of Article 263 of the Treaty on the Functioning of the European Union, the confirmatory decision of the European Commission, insofar as it granted public access to the Maltese documents listed under Nos 112 to 230⁶.

The General Court held that the contested decision, infringed Article 113(2) and (3) of Regulation (EC) No 1224/2009. The General Court clarified that these sectoral provisions preclude the disclosure to the public of data communicated by national authorities to the European Commission within the framework of Regulation (EC) No 1224/2009, without the prior and express consent of the Member State concerned⁷.

Accordingly, the European Commission has reassessed, in consultation with the Maltese authorities, the documents listed under Nos 112 to 230 in the annulled decision, in particular in light of Article 113 of Regulation (EC) No 1224/2009.

⁴ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, Official Journal L 343 of 22 December 2009, p. 1 (hereinafter ‘Regulation (EC) No 1224/2009’).

⁵ Order of the President of the General Court of 25 August 2017, *Republic of Malta v European Commission*, T-653/16 R, EU:T:2017:583.

⁶ Judgment of 3 May 2018, *Republic of Malta v European Commission*, T-653/16, EU:T:2018:241.

⁷ *Ibid.* See in particular paragraph 146 of the judgment.

Article 113, which pertains to ‘Confidentiality of professional and commercial secrecy’, provides as follows:

- ‘1. Member States and the Commission shall take all necessary steps to ensure that the data collected and received within the framework of this Regulation shall be treated in accordance with applicable rules on professional and commercial secrecy of data.
2. The data exchanged between Member States and the Commission shall not be transmitted to persons other than those in Member States or Community institutions whose functions require them to have such access unless the Member States transmitting the data give their express consent.
3. The data referred to in paragraph 1 shall not be used for any purpose other than that provided for in this Regulation unless the authorities providing the data give their express consent for the use of the data for other purposes and on condition that the provisions in force in the Member State of the authority receiving the data do not prohibit such use. [...]’

As a result of its new assessment of the documents listed under Nos 112 to 230 in its annulled decision, the European Commission concludes that all these documents, except Document 131, contain data collected within the meaning of the above mentioned provision, as construed by the General Court in paragraph 131 of its judgment of 3 May 2018.

These data consist, *inter alia*, of information on catches, quantities of fishery products, location of catches, types of species, data on specific vessels, data on inspections and observations, vessel monitoring data.

By letter of 29 April 2019, the Maltese authorities have reiterated their opposition to the public disclosure of the said data on the basis of the judgment of the General Court of 3 May 2018.

Against this background, public access must therefore be withheld to the above mentioned data contained in the 117 documents concerned, which have been identified by the European Commission, without objections from the Republic of Malta, as collected and sent by national authorities to the European Commission in the framework of Article 113 of Regulation (EC) No 1224/2009.

Consequently, access is hereby granted to the remaining parts of the documents, as well as to Document 131, subject to the redaction of personal data pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, for the reasons set in the part of the previous confirmatory decision which was not annulled by the judgment of the General Court of 3 May 2018.

Moreover, partial access is hereby granted, subject to the redaction of personal data pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, to the documents listed under Nos 1 to 111 and 231 to 240, insofar as the said judgment of the General Court did not annul the confirmatory decision in respect of such a disclosure.

Finally, I draw your attention to the means of redress available against this decision. You are entitled to either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions provided respectively in Article 263 and Article 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the Commission



Enclosures: (240)