



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

Director-General

Brussels,
MARE.E.4/MLC/ae

Ms. Anne Friel
Client Earth
36 Avenue de Tervuren
1040 Brussels
BELGIUM

By registered letter with acknowledgment of receipt
Advance copy by email: afriel@clientearth.org

Subject: Your application for access to documents – Ref GestDem No 2019/768

Dear Madam,

We refer to your e-mail dated 8 February 2019 in which you make a request for access to documents, registered on 11 February 2019 under the above-mentioned reference number.

You request access to the following documents related to the total allowable catches (TACs) for fish stocks in the Northeast Atlantic for 2019:

1. Any records, minutes or notes of meetings/discussions that took place between the Commission and the Member State representatives on the TACs for 2019, including any minutes or notes of Council working party/ministerial meetings taken by Commission staff, and any internal Commission briefings on the subject.
2. A full table of all proposed and agreed quota adjustments (such as those previously referred to as quota top-ups or any deductions) to account for a) catches that could be discarded before the introduction of the landing obligation, but now will have to be landed and b) exemptions from the landing obligation (in tonnes and %), and TACs before the adjustments (top-ups or deductions) were applied;
3. A detailed description of the methodology used to calculate quota adjustments (top-ups or deductions);
4. The calculations that the proposed and agreed quota adjustments (top-ups or deductions) were based on, ideally in Excel spreadsheet format.

5. Any documents relating to exemptions from the landing obligation within the period commencing with the STECF's Expert Working Group 18-06 of June 2018 and ending with the Commission's adoption of the draft discard plans for 2019 in October 2018, including any correspondence between the Commission and the Member States and any records, minutes or notes of meetings/discussions that took place between the Commission and the Member States regarding this matter.

We understood that you do not seek access to documents that you can search for in the Council register. Therefore, these documents are not included in our assessment.

My services have examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and concluded that access can be fully or partially granted to some of them.

1. Documents not existing

I regret to inform you that the Commission does not hold any documents that would correspond to the description given in your application under **category 2**, as the Commission did not produce any table that matches the features requested in your application.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application under category 2, are held by the Commission, the Commission is not in a position to fulfil your request.

2. Documents for which access is fully or partially granted

We enclose a copy of the documents requested under **categories 3, 4 and 5**. You may reuse them free of charge 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 document. Please note that the Commission does not assume liability stemming from the reuse.

Please note that some of the documents under category 3 and 5 to which you request access contain personal data, in particular names, functions and handwritten signatures.

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) No 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/EC¹ ('Regulation 2018/1725'). Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of Justice has specified that any

¹Official Journal L 205 of 21.11.2018, p. 39.

information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.²

Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data³.

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.⁵

Pursuant to Article 9(1)(b) of Regulation 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 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established 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 request, 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 subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal

²Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

³Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

⁴Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

⁵Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

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.

Consequently, I conclude 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 disclosure of the personal data concerned.

As to the handwritten signatures contained in some documents under category 5, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

3. Documents to which access is not granted

Your request concerns also the following documents:

- Under **category 5**:
 - o Flash report of 31-10-2018 – North Western Waters Member States Technical Group, 31-10-18 (Ares(2018)5577984),
 - o Flash report of 29.06.2018 - Scheveningen Technical Group, 27-28 June 2018 (Ares(2018)3467351),
 - o Flash report of 13.09.2018 - Scheveningen Technical Group, 12 September 2018 (Ares(2018)4704823),
 - o Annex to document No Ares(2018)3460993 of 29-06-2018 - “La selectividad del arte de pesca del voraz del Estrecho de Gibraltar”,
 - o Flash report of 19-10-2018 - Scheveningen Technical Group, 18 October 2018 (Ares(2018)5375035);
- Under **category 1**:
 - o Flash report of 26.09.2018 - meeting Mr. Aguiar Machado/Secretary General of Fisheries of Spain, 7 September 2018 (Ares(2018)4943657).

As regards all of these documents, I regret to inform you that access cannot be granted, as disclosure is prevented by the exception to the right of access laid down in the second subparagraph of Article 4(3) and the second subparagraph of Article 4(2) first indent of this Regulation.

In particular, the annex to document No Ares(2018)3460993 mentioned above is a doctoral thesis, which, as such, is protected by intellectual property rights. Its disclosure is then prevented by the exception to the right of access laid down in the second subparagraph of Article 4(2) first indent of Regulation 1049/2001. All the other documents you seek to obtain are flash reports of meetings with groups of Member States. They contain opinions of Commission staff regarding the other Institution’s and Member States negotiating stance, which were drafted in the legitimate expectation that they would not be made public. The opinions were expressed for internal use, in preparation of preliminary deliberations and negotiations during the inter-institutional process. For the negotiations to have a successful outcome, it is essential that representatives’ and delegations room for manoeuvre is not restricted by the disclosure of positions which the delegations had expressed freely and in the legitimate expectation that these would not be made public. The fixing of fishing opportunities is an ongoing process, which goes throughout the year, in particular through various amendments and the fixing of fishing opportunities for the next year. Moreover, the issues discussed and agreed are very similar from one year to another. Therefore, disclosure

of the documents requested would seriously undermine the decision-making process protected by Article 4(3), second paragraph of Regulation (EC) No 1049/2001. For an official record of the exchanges between Member States and the Commission on this topic, you may want to address yourself to the Council, which has produced a comprehensive report of the Council proceedings.

We have considered whether partial access could be granted to the documents requested. However, no meaningful partial access is possible, as the whole content of the documents in question is covered by the exception relating to the protection of the decision-making process of the Commission, provided for in Article 4(3), second subparagraph and by the exception relating to the protection of commercial interests, provided for in the first indent of Article 4(2), second subparagraph of Regulation (EC) No 1049/2001.

The exceptions laid down in 4(3) and 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. I note that you do not put forward any elements to demonstrate the existence of an overriding public interest in disclosure of the documents requested. Nor have I, based on my own analysis, been able to identify any elements capable of demonstrating the existence of a public interest that would override the need to protect the independence of the Commission's decision-making process grounded in Article 4(3) of Regulation (EC) No 1049/2001 and the need to protect the commercial interest of the natural person concerned grounded in Article 4(2) of this Regulation.

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 Secretariat-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,

João AGUIAR MACHADO
(e-signed)