



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

Director-General

Brussels,
MARE.E.4/MLC/ae

Ms. Selene Alvarez
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Avenue des Arts 40
1000 Brussels
BELGIUM

By registered letter with acknowledgment of receipt
Advance copy by email: ask+request-6431-075b339a@asktheeu.org

Subject: Your application for access to documents – GestDem No 2019/1108

Dear Madam,

We refer to your e-mail dated 22 February 2019 in which you make a request for access to documents, registered on 27 February 2019 under the above-mentioned reference number.

You request access to the following documents related to the total allowable catches (TACs) for EU fish stocks in the Baltic Sea discussed and adopted on 15 October 2018:

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. Any socio-economic evidence used to support exceeding ICES scientific advice.
3. Any calculations applied to ICES scientific advice on catches to arrive at proposed TACs.
4. A detailed description of the methodology used to calculate quota adjustments (top-ups or deductions);
5. The calculations that the proposed and agreed quota adjustments (top-ups or deductions) were based on, ideally in Excel spreadsheet format.

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 cannot be granted.

1. Documents under category 1

Your request concerns the following document: Minutes of meeting of 12 September 2018 between João Aguiar Machado and the new Permanent Representative of Denmark (No Ares(2018)4681996 of 12.09.2018).

I regret to inform you that access to this document 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) of Regulation No 1049/2001.

This document is a report of a meeting with a Member State representative. It contains 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.

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.

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.

The exceptions laid down in 4(3) 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.

2. Documents under category 2 to 5

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 to 5. With regard to documents under categories 2 and 3, the Commission did not produce any document that

matches the features requested in your application. With regard to documents under category 4 and 5, there is no top-up or deductions for the Baltic Sea TACs.

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 categories 2 to 5, are held by the Commission, the Commission is not in a position to fulfil your request.

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)