



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

The Director-General

Brussels,
MARE/D3/RM/Ares (2019)

Mr Thomas Spekschoor
155, Rue de la Loi
1040 Brussels
Belgium

By registered letter with
acknowledgment of receipt

Subject: Your application for access to documents – Ref GestDem No 2019/2087

Dear Sir,

We refer to your e-mail dated 9 May 2019 in which you make a request for access to documents, registered on 14 May 2019 under the above-mentioned reference number.

You request access to the following documents: ‘All communication between the European Union and the Netherlands regarding pulse fishing or electric fishing in the period 2008 - now, including but not limited to emails, letters, agendas of meetings, minutes of meetings, audio recordings, etc.’

I consider your request to cover documents held by DG MARE up to the date of your application, 9 May 2019.

Your application concerns the following documents:

- Ares(2011)1314874, Ares(2014)3991924, Ares(2019)4333464, Ares(2017)1203135, Ares(2017)1702716, Ares(2017)5321066, Ares(2018)362599, Ares(2018)1593062, Ares(2018)2157211, Ares(2018)3291480, Ares(2018)4372222, Ares(2018)5255357
- documents belonging to an EU Pilot file¹
- documents belonging to a complaint file².

¹ EU Pilot is a procedure for cooperation between the Commission and the Member State concerned on issues related to potential non-compliance with EU law.

² Procedure allowing any citizen to introduce a complaint to the Commission about a breach of Union law by authorities in an EU country.

1. Documents to which access is fully or partially granted

You will find enclosed a redacted copy of the documents requested. You may reuse the documents produced by the Commission 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. Documents received by the Commission from third parties are disclosed for information only. They do not reflect the position of the Commission and cannot be quoted as such.

Please note that some of the documents 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 data³.

Indeed, Article 3(1) of Regulation (EU) 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 information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.⁴

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 data⁵.

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁶, 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.⁷

Pursuant to Article 9(1)(b) of Regulation (EU) 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

³ 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 205 of 21.11.2018, p. 39).

⁴ Judgment 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](#).

⁵ Judgment 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](#).

⁶ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, [EU:C:2010:378](#), paragraph 59.

⁷ Whereas 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 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 (EU) 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 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, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

2. Documents to which access is refused

Having examined the other documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third party, I regret to inform you that access cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

Although both the EU Pilot and the complaint files are closed, at this stage, the European Commission's internal investigation process is on-going in order to decide whether or not an infringement procedure should be launched in the subject-matter concerned. Therefore, the European Commission considers that the investigation on the subject-matter is still on-going, irrespective of the finalisation of the EU Pilot and the complaint.

Disclosure of the documents requested would then undermine the protection of the purpose of the ongoing investigation. Indeed, disclosure of the document now would affect the climate of mutual trust between the authorities of the Member State and the Commission, which is required to enable them to resolve the case without having to refer it to the Court of Justice. Therefore, the exception laid down in Article 4(2) third indent of Regulation (EC) No 1049/2001 applies to this document.

The exception laid down in this Article applies unless there is an overriding public interest in the disclosure of the document. However, you have not shown how there could be a need for the public to obtain access to the requested documents, or how this public interest would override the public interest in achieving compliance of the Member State concerned with the relevant EU rules as soon as possible. We have also not been able to identify any other public interest that could override the public interest protected.

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting partial access to the documents requested. Only partial access to the following documents could be provided in the following way:

- Ares(2011)1314874: access granted to Annexes only⁸
- Ares(2017)1203135: access granted to the cover letter only
- Ares(2018)3291480: access granted to the cover letter only
- Ares(2018)4372222, access granted to the cover letter, Annexes I and II only

However, for the other documents, no meaningful partial access is possible without undermining the interests described above. Thus, I have concluded that the other documents requested are covered in their entirety by the invoked exception to the right of public access.

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 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

(e-signed)
João AGUIAR MACHADO

⁸ To be found here: <https://library.wur.nl/WebQuery/wurpubs/417863> and <http://library.wur.nl/WebQuery/wurpubs/415480>