



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

The Director-General

Brussels
MARE.E.4

Ms Anne Friel
Client Earth
60 Avenue du Trone
1050 Brussels

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

Subject: Your application for access to documents – Ref GestDem No 2020/0450

Dear Madam,

We refer to your e-mail dated 23 January 2020 in which you make a request for access to documents, registered on 24 January 2020 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 2020:

1. Any records, minutes or notes of meetings/discussions that took place between the Commission and the Member State representatives on the TACs for 2020, including any minutes or notes of Council working party/ministerial meetings taken by Commission staff, and any internal Commission briefings on the subject, as well as the Commission's legislative proposals for the 2020 TACs should they be annotated and/or contain negotiation directives.
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) insofar it differs from the approach taken last year as explained in the documents to which you were given access in the context of your request No Gestdem 2019/768;

4. The calculations that the proposed and agreed quota adjustments (top-ups or deductions) were based on, ideally in Excel spreadsheet format. In particular, any updates drawn up by the Commission after 25 October 2019, as well as the calculations regarding the final adjustments agreed by the Council insofar they differ from the calculations and results presented in WK 11790/2019 ADD 1 of 25/10/2019 and WK 11790/2019 INIT of 25/10/2019;

5. Any documents relating to exemptions from the landing obligation for 2020 in the North Sea, North Western Waters and South Western Waters in the period between the STECF's Expert Working Group 19-08 of June 2019 and the Commission's adoption of the discard plans in October 2019, 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 the following documents:

- documents that you can find in the Council register;
- as far as **category 3** is concerned, documents showing a different approach compared to last year: I can confirm that the approach taken did not differ from the previous year.

Therefore, documents corresponding to these categories 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 **categories 2 and 4** for the following reasons:

- for **category 2**, the Commission did not produce any table that matches the features requested in your application.
- **for category 4**, the Commission did not produce any updates to the calculations and results presented in WK 11790/2019 ADD 1 of 25/10/2019 and WK 11790/2019 INIT of 25/10/2019.

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 and 4** 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

Documents identified under **category 5** relating to the written procedure for the three regulations specifying details of the landing obligation are published in the Official Journal. These can therefore be accessed directly from the Official Journal (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2019:336:TOC>).

However, with regard to the other documents identified under **category 1 and 5**, their complete disclosure 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 and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;

Article 9(1)(b) of the Data Protection Regulation¹ 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 did not express any particular interest to have access to these personal data nor did you put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

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.

Furthermore, part of the document under category 1 is also covered by the exception relating to the protection of the decision-making process of the Commission, provided for in Article 4(3), second subparagraph of Regulation (EC) No 1049/2001. Indeed, the relevant undisclosed parts of this document contain the description of the positions of the Member States, as well as the opinions thereon of the representatives of the European Commission, expressed during the negotiating phase, preceding the adoption of the decision on total allowable catch in December 2019. They were drafted for internal purposes. The opinions included in these documents only reflect the understanding of the authors of the positions of the Member States expressed during the early stages of the negotiations and they were drafted under the legitimate expectation that they would not be made public. For the negotiations to have a successful outcome, it is essential that there is an atmosphere of mutual trust between the negotiating parties and that the frank exchange of views in a preparatory phase of Commission officials can be protected from public disclosure. Although the decision regarding total allowable catch for 2020 has been adopted by the Council in December 2019, the process of fixing of fishing opportunities is still ongoing throughout the year, in particular through various amendments and the fixing of fishing opportunities for the next year. Therefore, disclosure of the documents requested would seriously undermine the decision-making process protected by Article 4(3), first subparagraph of Regulation (EC) No 1049/2001.

With regard to the official record of the exchanges between Member States and the Commission on this topic, such exchanges are always taking place during Council meetings. Therefore, you may want to address yourself to the Council, which has produced a comprehensive report of the Council proceedings.

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in the 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

¹ 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.

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.

Please note that some of the documents under **category 1 and 5** to which you request access, contain parts out of scope for your request. Therefore, the parts concerned have been redacted from the documents.

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 sincerely,

(e-signed)
Bernhard FRIESS
Acting Director-General