



Council of the
European Union

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Brussels, 2 August 2022
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11692/22

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API 70

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 13/c/01/22

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 23 May 2022 and registered on the same day followed by an email on 18 July 2022 (Annex 1);
- the replies from the General Secretariat of the Council dated 7 and 22 July 2022 (Annex 2);
- the confirmatory application dated 29 July 2022 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Monday 23 May, 2022 11:34]

From: **DELETED**

Sent: lundi 23 mai 2022 11:34

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: access to documents request - Request for access to documents concerning the fishing opportunities for stocks shared between the UK and the EU for 2022

Dear Sir/Madam,

In accordance with Article 6(1) of Regulation 1049/2001, Article 3 of Regulation 1367/2006, and Article 42 of the Charter of Fundamental Rights, **DELETED** requests access to:

1. The following documents which are listed in the Council's Register:

- ST 12784 2021 INIT;
- ST 12784 2021 ADD 1;
- ST 12784 2021 COR 1;
- ST 12420 2021 INIT;
- ST 12343 2021 ADD 1;
- ST 12343 2021 ADD 2;
- ST 12343 2021 INIT;
- ST 12138 2021 INIT;
- ST 7418 2022 ADD 1;
- ST 7418 2022 INIT;
- ST 6996 2022 REV 1;
- ST 6996 2022 INIT;

- ST 6475 2022 ADD 3;
- ST 6475 2022 ADD 1;
- ST 6475 2022 ADD 2;
- ST 6475 2022 REV 1;
- ST 6475 2022 INIT;
- ST 6614 2022 INIT;
- ST 14672 2021 ADD 1;
- ST 14672 2021 INIT;
- ST 14671 2021 INIT;
- ST 14002 2021 INIT;
- ST 13883 2021 INIT;
- ST 13666 2021 INIT;
- ST 13511 2021 REV 1;
- ST 13511 2021 INIT;
- ST 6631 2022 REV 1;
- ST 6631 2022 INIT;
- ST 7409 2022 ADD 1;
- ST 13169 2021 ADD 2;
- ST 13169 2021 ADD 1;
- ST 13169 2021 INIT;
- ST 13264 2021 REV 1;
- ST 13264 2021 INIT;
- ST 12681 2021 INIT;
- ST 12035 2021 INIT;

- ST 7257 2022 INIT;
- ST 5880 2022 INIT;
- ST 5680 2022 INIT;
- ST 14409 2021 INIT;
- ST 14359 2021 INIT;
- ST 13470 2021 INIT;
- ST 13952 2021 INIT;
- ST 6020 2022 INIT;
- ST 6947 2022 INIT;
- ST 6330 2022 INIT;
- ST 7553 2022 REV 1;
- ST 7553 2022 INIT;
- ST 7156 2022 INIT;
- ST 7046 2022 REV 1;
- ST 7046 2022 INIT;
- ST 7011 2022 ADD 1;
- ST 7011 2022 INIT;
- ST 6470 2022 INIT;
- ST 6275 2022 INIT;

2. Documents that record the comments, positions and justifications of the Member States' delegations, the UK and Norwegian delegations, the Commission and the Council on the fishing opportunities for stocks shared with the UK and/or Norway for 2022, including in relation to the process leading to the adoption of the Council decision establishing the EU's position and the process leading to the adoption of the fishing opportunities themselves.

3. Documents that record any details on quota adjustments on stocks shared between the EU and the UK (such as deductions to factor in exemptions from the LO) applied by the EU and/or the UK, i.e. ideally a list of all pre-and post-deduction TAC figures for the EU and UK.

Finally, we request that the documents/information falling within the scope of this request, be made publicly available on the Council's documents register, in accordance with Articles 11 and 12 of Regulation 1049/2001 and Article 4 of Regulation 1367/2001.

Kind regards,

DELETED

[E-mail message sent to access@consilium.europa.eu on Monday 18 July, 2022 16:52]

From: **DELETED**

Sent: lundi 18 juillet 2022 16:52

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: Re: Ref. 22/1156-aa/vk

Dear TRANSPARENCY Access to documents (COMM),

Thank you for your response to our request for access to documents. In accordance with the principle of good administration and Article 41 of the EU Charter of Fundamental Rights, we respectfully ask you to provide a complete list of the subjects and type of the documents that were identified as coming within the scope of our request and have not been disclosed (listed at page 2-3). We have only been provided with the identification number of each document, which does not tell us what kind of document it is, what issues it touches upon and we therefore also cannot understand why these documents have been withheld. This would greatly benefit us in assessing the need to submit a confirmatory application within the statutory deadline (29 July 2022), which cannot be extended.

Yours sincerely,

DELETED



Council of the European Union

General Secretariat

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit / Transparency

Head of Unit

Brussels, 7 July 2022

DELETED

Email: **DELETED**

Ref. 22/1156-aa/vk

Request made on: 23.05.2022

Deadline extension: 15.06.2022

Dear **DELETED**,

Following our letter of 15 June 2022, the General Secretariat has concluded the examination of your request.

Please find attached the following documents:

- ST 12784/21 INIT;
- ST 12784/21 ADD 1;
- ST 12784/21 COR 1;
- ST 12138/21 INIT;
- ST 6996/22 REV 1;
- ST 6996/22 INIT;

- ST 6614/22 INIT;
- ST 14672/021 ADD 1;
- ST 14672/21 INIT;
- ST 14671/21 INIT;
- ST 13666/21 INIT;
- ST 12035/21 INIT;
- ST 7257/22 INIT;
- ST 14409/21 INIT;
- ST 14359/21 INIT;
- ST 13470/21 INIT;
- ST 6475 2022 INIT;
- ST 6475/22 REV 1;
- ST 6475/22 ADD 1;
- ST 6475 2022 ADD 2;
- ST 6475/22 ADD 3;
- ST 6947/22 INIT;
- ST 6330/22 INIT;

In addition to the documents you have requested, please find also attached the following working papers (WKs):

- 7717/2021;
- 12338/2021;
- 12338/2021 REV1;
- 12646/2021;
- 14908/2021;
- 12787/2021;
- 4385/2022;

- 5553/2022; and
- 7486/2022.

Please note that in documents WK 14908/2021, ST 13470/21, ST 12035/21, ST 7257/22 and ST 14409/21 we have removed the elements of their content that are not relevant to your request.

As regards the remaining documents you have requested, we regret to inform you that access to them cannot be granted for the reasons set out below. These documents are the following:

- ST 12420/21 INIT;
- ST 12343/21 ADD 1;
- ST 12343/21 ADD 2;
- ST 12343/21 INIT;
- ST 7418/22 ADD 1;
- ST 7418 2022 INIT;
- ST 14002 2021 INIT;
- ST 13883 2021 INIT;
- ST 13511/21 REV 1;
- ST 13511/21 INIT;
- ST 6631/22 REV 1;
- ST 6631/22 INIT;
- ST 7409/22 ADD 1;
- ST 13169/21 ADD 2;
- ST 13169/21 ADD 1;
- ST 13169/21 INIT;
- ST 13264/21 REV 1;
- ST 13264/21 INIT;
- ST 12681/21 INIT;
- ST 5880 2022 INIT;

- ST 5680/22 INIT;
- ST 13952/21 INIT;
- ST 6020/22 INIT;
- ST 6275/22 INIT;
- ST 6470/22 INIT;
- ST 7553/22 REV 1;
- ST 7553/22 INIT;
- ST 7156/22 INIT;
- ST 7011/22 ADD 1;
- ST 7011/22 INIT;
- ST 7046/22 REV 1; and
- ST 7046/22 INIT.

Further to the documents you have requested, we have also identified WK 5554/2022 INIT as relevant to your request. We regret however to inform you this document cannot be given for the reasons set out below.

The above-listed documents contain positions of the parties involved in the consultations leading to the establishment of total allowable catches (“TACs”) in fisheries. They contain information on negotiations’ strategy and tactics, and agreed records, notably, technical and political elements discussed in the context of the annual consultations between delegations of the EU and the UK before concluding the agreed records. These consultations are conducted by the European Commission, on behalf of the EU, in close cooperation with the representatives of the EU Member States participating in the competent preparatory bodies of the Council, in particular the Working Party on Fisheries.

The release of these documents would weaken the EU position in respect of the upcoming consultations carried out in 2022 in view of agreeing on the fishing opportunities for 2023. Indeed, although the agreed records were signed and the corresponding fishing opportunities adopted by the Council, the establishment of fishing opportunities and their negotiations with third countries is an ongoing process, which goes throughout the year, in particular through various amendments leading to the fixing of fishing opportunities for the next year. Moreover, the issues discussed and agreed are very similar from one year to another. Therefore, a possible disclosure of the information contained in these documents would undermine not only the diplomatic relations between the parties and the course of future negotiations but also the possibilities of a successful outcome for the EU interests. Quality relations and mutual trust are paramount for the diplomatic stability, negotiation and conclusion of future agreements with a third party, in particular the UK.

Disclosure of the information contained in the said documents would also have a negative impact on the relations between the EU and the UK. Should its internal views and negotiation strategy be made public while negotiations are still ongoing, the position of the EU in such international negotiations would be seriously weakened. This is of particular relevance and political sensitiveness taking into account the current difficulties concerning the bilateral relations between the EU and UK.

Disclosure of the documents would therefore undermine the protection of the public interest as regards international relations, pursuant to Art. 4 (1) (a), 3rd indent, of Regulation 1049/2021.

We have also looked into the possibility of releasing parts of these documents. However, as the exception to the right of access applies to the entire content of the documents, the GSC is unable to accede to your request.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.

Yours sincerely,

Fernando FLORINDO

Enclosures: 32

Link to the documents: <https://we.tl/t-hlfoDf7UOJ>



Council of the European Union

General Secretariat

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit / Transparency

Head of Unit

Brussels, 22 July 2022

DELETED

Email: **DELETED**

Ref. 22/1156-aa/mw- ADD1

Request made on: 23.05.2022

Deadline extension: 15.06.2022

Dear **DELETED**,

Following our email of 18 July 2022, please find below a list of the subjects and type of the documents that were identified as coming within the scope of your request and have not been disclosed.

We apologise for the lack of information on these documents in our letter of 7 July 2022.

These documents are the following:

Document ST 12420/21 of 06.10.2021 is a note from the General Secretariat of the Council (GSC) to delegations on the Proposal for a Council Decision concerning the position to be taken on behalf of the Union in the annual consultations with the United Kingdom to agree total allowable catches. It contains a Presidency compromise on the text of the proposal to be discussed at the Working Party on Fisheries Policy of 07.10.2021.

Document ST 12343/21 ADD1 of 30.09.2021 is a note from the GSC to delegations on a Proposal for a Council Decision concerning the position to be taken on behalf of the Union in the annual consultations with the United Kingdom to agree total allowable catches. It contains comments from Belgium on the proposal.

Document [ST 12343/21 ADD2](#) of 30.09.2021 is a note from the GSC to delegations on a Proposal for a Council Decision concerning the position to be taken on behalf of the Union in the annual consultations with the United Kingdom to agree total allowable catches. It contains comments from France and the Netherlands on the proposal.

Document [ST 12343/21](#) of 29.09.2021 is a note from the GSC to delegations on a Proposal for a Council Decision concerning the position to be taken on behalf of the Union in the annual consultations with the United Kingdom to agree total allowable catches. It contains comments from Denmark, Sweden and Germany on the proposal.

Document [ST 7418/22 ADD1](#) of 29.03.2022 is a note from the GSC to Coreper on a Council Regulation amending Council Regulation (EU) [2022/109](#) fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non-Union waters. It contains statements by Member States on exchange of fishing opportunities for certain stocks under ICCAT, on the re-inclusion of access to EU waters of Western waters on mackerel, on Svalbard cod and in relation to quota pools.

Document [ST 7418/22](#) of 25.03.2022 is a note from the GSC to delegations on: Règlement du Conseil modifiant le règlement (UE) [2022/109](#) du Conseil établissant, pour 2022, les possibilités de pêche pour certains stocks halieutiques et groupes de stocks halieutiques, applicables dans les eaux de l'Union et, pour les navires de pêche de l'Union, dans certaines eaux n'appartenant pas à l'Union. It contains a draft Decision to use the written procedure for the adoption (this document exists only in French).

Document [ST 14002/22](#) of 16.11.2021 is a note from the GSC to delegations on Bilateral EU-UK consultations on fishing opportunities for 2022. It contains changes suggested by the Presidency to the Commission non-paper as regards the position to be endorsed by the Working Party on Fisheries on the bilateral EU-UK consultations on fishing opportunities for 2022.

Document [ST 13883/21](#) of 12.11.2021 is a note from the GSC to delegations on Bilateral EU-UK consultations on fishing opportunities for 2022. It contains a Commission non-paper on the approach in view of the annual consultations for 2022.

Document [ST 13511/1/21 REV1](#) of 08.11.2021 is a note from the GSC to delegations on the Preparation of bilateral EU-UK consultations on fishing opportunities for 2022. It contains revised suggested changes by the Presidency to the Commission non-paper on bilateral EU-UK consultations on fishing opportunities for 2022.

Document [ST 13511/21](#) of 04.11.2021 is a note from the GSC to delegations on the Preparation of bilateral EU-UK consultations on fishing opportunities for 2022. It contains the changes suggested by the Presidency to the Commission non-paper on these consultations.

Document ST 6631/1/22 REV1 of 02.03.2022 is a note from the GSC to delegations on EU-UK – Consultations on fishing opportunities for sandeel for 2022.

It is a corrected version of document ST 6631/22 (Commission non-paper on the subject).

Document ST 6631/22 of 01.03.2022 is a note from the GSC to delegations on EU-UK – Consultations on fishing opportunities for sandeel for 2022.

It contains a Commission non-paper which aims to contribute to effective coordination with the Council in the preparation of the consultations with the UK to agree on the fishing opportunities.

Document ST 7409/22 ADD1 of 30.03.2022 contains the Draft minutes of the Council of the EU (Agriculture and Fisheries) held on 21.03.2022.

Document ST 13169/21 ADD2 of 29.10.2021 is a note from the GSC to delegations on Bilateral EU-UK, Trilateral EU-UK-NO and Bilateral EU-NO consultations on fishing opportunities for 2022. It contains comments from the Danish delegation on the EU-UK consultations for 2022, set out in the Commission non-paper, doc. 12681/21.

Document ST 13169/21 ADD 1 of 25.10.2021 is a note from the GSC to delegations on Bilateral EU-UK, Trilateral EU-UK-NO and Bilateral EU-NO consultations on fishing opportunities for 2022. It contains comments from Belgium on the EU-UK consultations for 2022, set out in the Commission non-paper, doc. 12681/21.

Document ST 13169/21 of 22.10.2021 is a note from the GSC to delegations on Bilateral EU-UK, Trilateral EU-UK-NO and Bilateral EU-NO consultations on fishing opportunities for 2022. It contains comments from Denmark, Germany, France, Ireland, Spain, the Netherlands, Portugal and Sweden on the Commission non-paper, doc. 12681/21.

Document ST 13264/1/21 REV1 of 28.10.2021 is a note from the GSC to delegations on Trilateral EU-UK-NO and bilateral EU-NO consultations on fishing opportunities for 2022. It is a revised document outlining the changes suggested by the Presidency to the Commission non-paper on trilateral EU-UK-NO and bilateral EU-NO consultations on fishing opportunities for 2022.

Document ST 13264/21 of 27.10.2021 from the GSC to delegations on Trilateral EU-UK-NO and bilateral EU-NO consultations on fishing opportunities for 2022. It is a document outlining the changes suggested by the Presidency to the Commission non-paper on trilateral EU-UK-NO and bilateral EU-NO consultations on fishing opportunities for 2022.

Document ST 12681/21 of 18.10.2021 is a note from the GSC to delegations on Bilateral EU-UK, Trilateral EU-UK-NO and bilateral EU-NO consultations on fishing opportunities for 2022. It contains a Commission non-paper on the proposal to contribute to the coordination with the Council in the preparation of the consultations with the UK and with the UK and Norway.

Document [ST 5880/22](#) of 11.02.2022 is a note from the GSC to delegations containing the Outcome of proceedings of the Working Party on Fisheries Policy of 3 February 2022 (I. ICCAT: ALBACORE TUNA IN THE MEDITERRANEAN II. EU-UK III. COASTAL STATES IV. AOB –).

Document [ST 5680/22](#) of 10.02.2022 is a note from the GSC to delegations containing the Outcome of proceedings of the Working Party on Fisheries Policy of 27 January 2022 (I. MAURITIUS II. NPFC III. ICCAT: ALBACORE TUNA IN THE MEDITERRANEAN IV. CONTROL REGULATION V. MACKEREL VI. EU-UK VII. AOB –).

Document [ST 13952/21](#) of 16.11.2021 is a note from the GSC to delegations on Trilateral EU-UK-NO consultations on fishing opportunities for 2022.

It contains changes suggested by the Presidency to the Commission non-paper as regards herring on trilateral EU-UK-NO consultations on fishing opportunities for 2022, as endorsed by a written consultation that concluded on 15 November 2021.

Document [ST 6020/22](#) of 21.02.2022 is a note from the GSC to delegations.

It contains the Outcome of proceedings of the Working Party on Fisheries Policy of 10 February 2022 (I. FAO - WORKING GROUP on COFI SUB-COMMITTEE II. NORWAY III. CONTROL REGULATION IV. AOB).

Document [ST 6275/22](#) of 15.02.2022 is a note from the GSC to delegations containing a Draft decision No 1/2022 of the Specialised Committee on Fisheries establishing a Working Group on Fisheries.

Document [ST 6470/22](#) of 23.02.2022 is a note from the GSC to delegations on Guidelines on Special Stocks non-paper.

It contains a Commission services non-paper on the orientations for the EU position for Guidelines for the setting of the provisional TACs by each party for special stocks to be adopted within the Specialised Committee on Fisheries (SCF) under Article 499(5) TCA.

Document [ST 7553/1/22 REV1](#) of 28.03.2022 is a note from the GSC to delegations.

It contains a revised Presidency compromise on a Commission Services Non-paper on Union position to be taken in the Specialised Committee on Fisheries, established under Article 508 of the EU-UK Trade & Cooperation Agreement .

Document [ST 7553/22](#) of 25.03.2022 is a note from the GSC to delegations.

It contains a revised Presidency compromise on a Commission Services Non-paper on Union position to be taken in the Specialised Committee on Fisheries, established under Article 508 of the EU-UK Trade & Cooperation Agreement.

Document [ST 7156/22](#) of 11.03.2022 is a note from the GSC to delegations.

It contains a Commission Services non-paper on Union position to be taken in the Specialised Committee on Fisheries, established under Article 508 of the EU-UK Trade & Cooperation Agreement.

Document ST 7011/22 ADD1 of 09.03.2022 is a note from the GSC to delegations on Guidelines on Special Stocks non-paper.

It contain comments from the Danish and Spanish delegations on the non-paper setting out guidelines on special stocks with the Trade and Cooperation Agreement between EU and the UK.

Document ST 7011/22 of 08.03.2022 is a note from the GSC to delegations on Guidelines on Special Stocks non-paper.

It contain comments from Sweden and Germany on the non-paper setting out guidelines on special stocks with the Trade and Cooperation Agreement between EU and the UK.

Document ST 7046/1/22 REV1 of 10.03.2022 is a note from the GSC to delegations on Guidelines on Special Stocks non-paper.

It contains a revised Presidency compromise on the Commission services non-paper on the orientations for the EU position for Guidelines for the setting of the provisional TACs by each party for special stocks to be adopted within the Specialised Committee on Fisheries (SCF) under Article 499(5) TCA.

Document ST 7046/22 of 09.03.2022 is a note from the GSC to delegations on Guidelines on Special Stocks non-paper.

It contains a Presidency compromise on the Commission services non-paper on the orientations for the EU position for Guidelines for the setting of the provisional TACs by each party for special stocks to be adopted within the Specialised Committee on Fisheries (SCF) under Article 499(5) TCA.

Document WK 5554/2022 of 13.04.2022 is a note from the GSC to delegations on the Third meeting of the Specialised Committee on Fisheries.

It contains the documents submitted by the Parties for the 3rd meeting of the Specialised Committee on Fisheries established by the EU-UK Trade and Cooperation Agreement taking place on 27 April 2022.

We remain at your disposal for any information you may require.

Yours sincerely,

Fernando FLORINDO

[E-mail message sent to access@consilium.europa.eu on Friday, 29 July, 2022 12:12]

From: **DELETED**

Sent: vendredi 29 juillet 2022 12:12

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: Internal review of access to documents request - Request for access to documents concerning the fishing opportunities for stocks shared between the UK and the EU for 2022

Dear Sir/Madam,

Confirmatory application in relation to Request for access to documents Ref. 22/1156-aa/vk

1. In conformity with Article 7(2) of Regulation 1049/2001, **DELETED** (the “Applicant”) hereby submits a confirmatory application regarding the Council’s decision of 7 July 2021 (the “Decision”) which partially refuses full access to certain documents that have been identified as falling under the scope of the request for access to documents submitted on 23 May 2022 which was registered under Ref. 22/1156-aa/vk (the “Request”).
2. Namely, the confirmatory application is strictly connected to the following documents: ST 12420/21 INIT; ST 12343/21 ADD 1; ST 12343/21 ADD 2; ST 12343/21 INIT; ST 7418/22 ADD 1; ST 7418 2022 INIT; ST 14002 2021 INIT; ST 13883 2021 INIT; ST 13511/21 REV 1; ST 13511/21 INIT; ST 6631/22 REV 1; ST 6631/22 INIT; ST 7409/22 ADD 1; ST 13169/21 ADD 2; ST 13169/21 ADD 1; ST 13169/21 INIT; ST 13264/21 REV 1; ST 13264/21 INIT; ST 12681/21 INIT; ST 5880 2022 INIT; ST 5680/22 INIT; ST 13952/21 INIT; ST 6020/22 INIT; ST 6275/22 INIT; ST 6470/22 INIT; ST 7553/22 REV 1; ST 7553/22 INIT; ST 7156/22 INIT; ST 7011/22 ADD 1; ST 7011/22 INIT; ST 7046/22 REV 1, ST 7046/22 INIT, WK 5554/2022 INIT (the “Requested Documents”).

3. The Decision refuses access to the Requested Documents on the basis of the exception from disclosure protecting international relations provided by Article 4 para. (1), letter (a), 3rd indent of Regulation 1049/2021.

4. The Applicant acknowledges that the Decision includes also the disclosure of documents identified as falling under the Request and confirms the receipt of these files.

1. PRELIMINARY REMARKS

5. As a preliminary point, the Applicant is surprised that disclosure of the Requested Documents has been refused, especially as the same categories of documents, such as Commission non-papers, Member States comments on such non-papers, Presidency documents and records of Council Working Party meetings, have been disclosed in previous years.

6. For example, in relation to a similar request for access to documents submitted on 14 October 2021 with regard to the fishing opportunities for stocks shared between the UK and the EU for 2021 (request registered by the Council under Ref. 21/1729-aa/nb) the following documents were disclosed: two Commission non-papers titled “Preparation of the bilateral EU-UK consultations on fishing opportunities for 2021 and, for deep-sea stocks, for 2021 and 2022 - Commission non-paper” (ST 5031 2021 INIT and ST 5031 2021 REV 1), several documents containing Member State comments on the Commission’s “Proposal for a Council Decision concerning the position to be taken on behalf of the European Union in the consultations with the United Kingdom to agree on total allowable catches for 2021 and for certain deep sea stocks for 2021 and 2022“, including Irish, Danish, Spanish and French comments (ST 6232 2021 INIT, ST 6232 2021 ADD 3, ST 6232 2021 ADD 1, ST 6232 2021 ADD 4), as well as a Council working paper containing a Presidency compromise on the same proposal (wk02332.en21). Moreover, we received partial access to multiple documents containing Presidency summaries of Council Working Party meetings related to fishing opportunities for EU/UK shared stocks (wk04856.en21.PA, wk05202.en21.PA, wk05754.en21.PA, wk06014.en21.PA, wk06246.en21.PA, wk06792.en21.PA)

7. We note that these documents were produced and disclosed after the UK's exit from the EU.

8. Based on the description (as received from the Council on 22 July 2022 in the document 22 1156.en.pop.aa.mw.ADD1) of the files withheld by the Council, many of the withheld Requested Documents clearly fall into the same categories as the above-mentioned files, which were previously disclosed: Commission non-papers (ST 13883 2021 INIT, ST 6631/22 REV 1, ST 6631/22 INIT, ST 12681/21 INIT); Member State comments (ST 12343/21 ADD 1, ST 12343/21 ADD 2, ST 12343/21 INIT, ST 13169/21 ADD 2, ST 13169/21 ADD 1, ST 13169/21 INIT); Presidency documents (ST 12420/21 INIT, ST 14002 2021 INIT, ST 13511/21 REV 1, ST 13511/21 INIT, ST 13264/21 REV 1, ST 13264/21 INIT, ST 13952/21 INIT); and meeting records (ST 5880 2022 INIT, ST 5680/22 INIT, ST 6020/22 INIT).

9. The Applicant would like to make two further preliminary points on the fact that the Requested Documents constitute legislative documents and contain environmental information.

THE REQUESTED DOCUMENTS CONSTITUTE LEGISLATIVE DOCUMENTS

10. The Requested Documents constitute "legislative documents" within the meaning of Regulation 1049/2001 as they are documents elaborated in the process of establishing the fishing opportunities for stocks shared between the UK and the EU for 2022, which imposes legally binding obligations for the Member States.

11. Article 12(2) of Regulation 1049/2001 defines "legislative documents" as "documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States". Recital 6 clarifies that the co-legislators intended the process leading to the adoption of implementing and delegated acts to fall within the definition of "legislative documents". It states: "[w]ider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent" (emphasis added).

12. It should be noted that "acting in their legislative capacity" for the purposes of Regulation 1049/2001 is not confined to the adoption of acts by way of the ordinary or special legislative procedures, defined in Articles 289 TFEU. This is clarified by the reference to "delegated powers" in recital 6. The adoption of TACs on the basis of Article 43(3) TFEU is comparable to a delegated power. This is consistent with the Court of Justice's finding that fishing opportunities adopted under Article 43(3) are "intended to be taken in order to implement provisions adopted on the basis of Article 43(2)." (Joined Cases C-103/12 and C-165/12, 26 November 2014, EU:C:2014:2400, para. 50).

13. It is therefore clear that in adopting Regulation 1049/2001, the co-legislators made a normative choice to define the concept of "legislative documents" according to the binding effect that certain EU acts have in relation to the Member States, and not in accordance with the procedure for their adoption. Therefore, the fact that the decisions relevant to this request were not adopted in accordance with the ordinary or special legislative procedures laid down in the TFEU is wholly irrelevant to the status of the Requested Documents as legislative documents.

14. Given that the Requested Documents, and the positions expressed therein, directly relate to the adoption of the 2022 TAC Regulation (Council Regulation (EU) 2022/109 of 27 January 2022, as amended by Council Regulation (EU) 2022/515 of 31 March 2022), they are therefore to be considered legislative documents.

THE REQUESTED DOCUMENTS CONTAIN ENVIRONMENTAL INFORMATION

15. The Requested Documents contain "environmental information" within the meaning of Article 2(1)(d) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (the "Aarhus Regulation").

16. The Aarhus Regulation defines "environmental information" as, inter alia: "any information in written, visual, aural, electronic or any other material form on: [...] (iii) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in points (i) and (ii) as well as measures or activities designed to protect those elements".

17. The elements referred to in point (i) are: "the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements."

18. The Requested Documents contain information about the fishing opportunities for 2022 adopted through the TAC Regulation, which regulates the exploitation of fish stocks and other marine species in the Northeast Atlantic. Therefore, they are information on measures that have a direct impact on biological diversity in coastal and marine areas. As such, the Requested Documents contain "environmental information" within the meaning of the Aarhus Regulation.

19. As will be shown below, the status of the Requested Documents as legislative documents containing environmental information is of significance with regard to the application of the exceptions in Article 4 para. (1), letter (a), 3rd indent of Regulation 1049/2021.

2. MISAPPLICATION OF THE EXCEPTION IN ARTICLE 4(1), LETTER (A), 3RD INDENT OF REGULATION 1049/2021 AND FAILURE TO STATE REASONS

20. The Council seeks to justify non-disclosure of all of the Requested Documents based on one generic statement:

“The release of these documents would weaken the EU position in respect of the upcoming consultations carried out in 2022 in view of agreeing on the fishing opportunities for 2023. Indeed, although the agreed records were signed and the corresponding fishing opportunities adopted by the Council, the establishment of fishing opportunities and their negotiations with third countries is an ongoing process, which goes throughout the year, in particular through various amendments leading to the fixing of fishing opportunities for the next year. Moreover, the issues discussed and agreed are very similar from one year to another. Therefore, a possible disclosure of the information contained in these documents would undermine not only the diplomatic relations between the parties and the course of future negotiations but also the possibilities of a successful outcome for the EU interests. Quality relations and mutual trust are paramount for the diplomatic stability, negotiation and conclusion of future agreements with a third party, in particular the UK.

Disclosure of the information contained in the said documents would also have a negative impact on the relations between the EU and the UK. Should its internal views and negotiation strategy be made public while negotiations are still ongoing, the position of the EU in such international negotiations would be seriously weakened. This is of particular relevance and political sensitiveness taking into account the current difficulties concerning the bilateral relations between the EU and UK.”

21. This very broad and vague justification cannot support the application of the exception from disclosure provided under Article 4(1), letter (a), 3rd indent of Regulation 1049/2021 as it falls short of the legal test established by the Court of Justice, Article 296 TFEU and Article 4(1) of Regulation 1049/2001 itself.

22. The CJEU previously concluded "the public right of access to documents of the institutions is related to the democratic nature of those institutions." (C 280/11 P Council v Access Info Europe, para. 27 and the case law cited.) This is enshrined in primary EU law.

23. According to Article 1 second paragraph of TEU, the EU is a legal order characterised as an "ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen". Moreover, Article 15(1) TFEU provides that the institutions, bodies, offices and agencies of the European Union are to conduct their work as openly as possible. Other very important sources of law that oblige EU institutions to respect this principle of openness are Article 10(3) TEU, Article 298(1) TFEU and Article 42 of the Charter of Fundamental Rights of the European Union (C 213/15 P Commission v Breyer, para. 52).

24. More specifically as regards Article 4(1), letter (a), 3rd indent of Regulation 1049/2021, the CJEU has clarified that the EU institution's discretion is limited by the following requirements:

“ 51.[...] the mere fact that a document concerns an interest protected by an exception to the right of access laid down in Article 4 of Regulation No 1049/2001 is not sufficient to justify the application of that provision.

[...]

64. [...] where the institution concerned refuses access to a document the disclosure of which would undermine one of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, that institution remains obliged, as noted in paragraph 52 of the present judgment, to explain how disclosure of that document could specifically and actually undermine the interest protected by an exception provided for in that provision, and the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical.” (Case C 350/12 P, Council of the European Union v Sophie in 't Veld paras. 51 and 64 and the case law cited, emphasis added)”.

25. The Council's Decision neither provides a plausible explanation as to how disclosure of the Requested Documents would specifically and actually undermine the protection of the EU's international relations, nor how the risk of that undermining could be considered as reasonably foreseeable and not purely hypothetical.

26. The Council only invokes hypothetical risks as to the impact on the relations with the UK without providing any concrete explanations as to what reasonably foreseeable effect the release of any of the specific Requested Documents would have. The Council merely makes general and vague references which could apply to any context in which the EU is negotiating internally on matters that have implications for third parties.

27. If the Council's reasoning was accepted, essentially any document related to the Council's decision-making on the TAC Regulation would become exempted from disclosure indefinitely, including any historic information. This follows from the fact that the Council applies the exception to documents that relate to a decision-making procedure that is already closed. This would also have far-reaching implications for documents in many other policy areas, given that many of the policy decisions of the EU impact on the UK. The transparency regime under Regulation 1049/2001 can then not fulfil its purpose.

28. The Council's reply further does not give adequate weight to the fact that the Requested Documents are legislative documents. As the Court has held in Case C-57/16 ClientEarth v Commission, "[...] it should be borne in mind that recital 6 of Regulation No 1049/2001 indicates that wider access should be granted to documents in cases where the EU institutions are acting in their legislative capacity. The possibility for citizens to scrutinise and be made aware of all the information forming the basis for EU legislative action is a precondition for the effective exercise of their democratic rights as recognised, in particular, in Article 10(3) TEU (see, to that effect, judgments of 1 July 2008, Sweden and Turco v Council, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 46, and of 17 October 2013, Council v Access Info Europe, C-280/11 P, EU:C:2013:671, paragraph 33). As is emphasised, in essence, by ClientEarth, the exercise of those rights presupposes not only that those citizens have access to the information at issue so that they may understand the choices made by the EU institutions within the framework of the legislative process, but also that they may have access to that information in good time, at a point that enables them effectively to make their views known regarding those choices."

29. Nor did the Council give adequate weight to the fact that the Requested Documents contain environmental information. In accordance with Art. 6(1) Regulation 1367/2006, "the grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure." According to the Court of Justice, the requirement to restrictively interpret this exception "is all the more compelling where the documents communication of which is requested contain environmental information." (C-60/15 P Saint-Gobain Glass v Commission, para. 78). Accordingly, the justification for non-disclosure provided by the Council should have equally been more compelling.

30. Moreover, the fact that the Requested Documents amount to environmental information required the Council to take into account the public interest served by disclosure. The Requested Documents relate, amongst others, to the Member State positions in relation to the fixing of annual fishing limits. This decision-making procedure has far-reaching consequences: The Council has missed the legally binding deadline to end overfishing by achieving the Maximum Sustainable Yield (MSY) exploitation rate by 2020 at the latest for all stocks, as required by Art. 2(2) of the CFP Basic Regulation. Overfishing continues to be a major issue, with many stocks outside safe biological limits, and despite some long-term progress many TACs are still set above the best available scientific advice. It is therefore in the public interest of EU citizens to know the positions that their democratically elected leaders take at the EU level on this matter. The Council should therefore have balanced this public interest in disclosure against the interest in withholding the information when assessing whether Art. 4(1), letter (a), 3rd indent of Regulation 1049/2001 applied to the Requested Documents.

31. The Council has therefore clearly failed to demonstrate that disclosure would specifically and actually undermine the ongoing decision-making procedure and that the risk is reasonably foreseeable and not purely hypothetical. It has instead applied a broad and generic exception, which does not comply with the requirement that the exceptions are to be applied narrowly as set out in the Court's case law, let alone with the requirement of particularly wide access in relation to legislative documents that contain environmental information. As a result, the Council has misapplied Article 4(1), letter (a), 3rd indent of Regulation 1049/2001.

FAILURE TO STATE REASONS AS REQUIRED BY ART. 296 TFEU

32. The above mentioned failure to demonstrate that the exception under Article 4(1), letter (a), 3rd indent of Regulation 1049/2001 applied, coincides with a failure to provide reasons.

33. In the specific context of a request for access to documents, the duty to state reasons in Article 296 TFEU entails that if an institution decides to refuse access to a document which it has been asked to disclose, it must provide a statement of reasons "from which it is possible to understand and ascertain, first, whether the requested document does in fact fall within the sphere covered by the exception relied on and, second, whether the need of protection relating to that exception is genuine." (Case T-796/14, Philip Morris Ltd v Commission, para. 31 and the case law cited). As explained above, the statement of reasons was broad and generic; it does not enable the Applicant, nor would it enable the Court, to assess whether the individual Requested Documents fall within the sphere of the exception, nor whether the need of protection is genuine. The Council also gives no evidence of having considered that the Requested Documents amount to legislative documents and contain environmental information. The Council should have explained how these facts featured in its decision. This should have included an explanation of how it has taken the public interest in disclosure into account, as required by Art. 6(1) Regulation 1367/2006. The absence of these explanations amounts to a failure to state reasons.

34. The Council therefore breached the obligation to state reasons under Article 296(2) TFEU and Article 41 TFEU.

REQUEST FOR PRO-ACTIVE DISCLOSURE

35. Finally, we request that the Requested Documents be made publicly available on the Council's documents register, in accordance with Articles 11 and 12 of Regulation 1049/2001 and Article 4 of Regulation 1367/2001.

Yours faithfully,

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A full history of my request and all correspondence is available on the Internet at this address:

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