

**Mrs Charlina Vitcheva**  
**Director-General for Maritime Affairs and Fisheries**  
**JII99, B-1000 BRUSSELS**

**Subject: request of access to document - audit on the external fleet (Complaint CHAP(2019) 00315)**

Brussels, 26 May 2021

Dear Mrs Vitcheva,

Greetings from CFFA!

On 6 February 2019, CFFA, as well as other environmental and African artisanal fishing organisations (PRCM, Bloom, Danish Living Seas and CAOPA), jointly lodged a complaint to the European Commission for alleged failure by Italian authorities to adopt measures to monitor their vessels in the waters of Sierra Leone and, where relevant, to sanction them if they were operating illegally in contravention of EU fisheries rules.

Following this, we had several exchanges with your services. We were informed that our complaint had been integrated in a broader EU Pilot case under the reference EUP(2019)9562 launched on 29 November 2019, and also, that an audit on the Member States capacities to monitor and control their external fleets had been conducted by the Commission.

We have requested access to this audit, which has been denied until now, the main argument being that the Pilot case was still on-going. **As detailed in our request, accessing this audit is of great importance for promoting sustainable fishing by EU fleets in West Africa and clearly in line with the transparency objectives of the EU, since “there is an overriding public interest in disclosure”<sup>1</sup>.**

With a letter from Mrs Doppelhammer, head of the Legal Unit, dated 3 May 2021, your services have informed our organization that the Commission closed the referred complaint. This means that any issue raised in our complaint has been cleared through the dialogue between the Italian authorities and the Commission. In that context and, in accordance with the follow-up of the case as described in the pre-closure letter by Mrs Doppelhammer of 6 April 2021, **we are confident that the activity of the Italian vessels fishing in Sierra Leone’s coastal waters continues complying with all rules applicable.**

Concerning the access to the audit report on the external fleet, your services inform us that the investigations are still ongoing in the EU Pilot case. They do not say more, and in particular they do not say whether these investigations constitute the grounds for refusing the communication of this report but, unless we are wrong, we deduce from the wording that they are these very grounds.

We assume that your services consider that the Commission is allowed to refuse access to the audit on the basis of Article 4 (2) of Regulation 1049/2001<sup>2</sup>.

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<sup>1</sup> See art. 4§2 of the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001R1049>

<sup>2</sup> See note 1.

We can agree with that position for the parts of the audit for which investigations are still ongoing.

**However, the parts of the audit which are related to the issues raised in our complaint, as this complaint has been closed to the Commission's satisfaction, they are no longer relevant for the EU Pilot case. Therefore, there are no grounds to refuse a partial access to the audit, namely the parts dealing with the issues at stake in the complaint. As these issues are positively closed, there is no risk of undermining the protection of the purposes of the audit.**

Certainly, as stated in relevant case-law, a general presumption that disclosure of documents will in principle undermine the protection of one of the interests listed in Article 4 of Regulation 1049/2001 does not rule out that specific documents are not covered by that presumption. The application of a general presumption of confidentiality cannot be interpreted as permitting to an EU institution to reply in a global manner that all of the documents for which access is required fall under this general presumption. Such a general presumption is not irrebuttable. **It is for the institution to identify, within a specific file, the documents which remain covered by the general presumption.**

In the particular case of the audit required, it is for the Commission to identify the documents which are still covered by the presumption of confidentiality because they are still used in the investigations carried out in the EU Pilot case 2019/9562. **The other documents, as those dealing with the issues raised in our complaint, cannot undermine these investigations since all of them have been cleared to the Commission's satisfaction.**

In conclusion, **our organization requests access to the documents of the audit report that are no longer covered by the presumption of confidentiality, in particular those concerning the monitoring of the Italian fishing fleet in coastal waters of African countries.**

Yours sincerely,



**Beatrice Goréz**  
CFFA coordinator