

**European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels**

Subject: Confirmatory Application in respect of the Commission's unsatisfactory response to access to document request (Ref GestDem request 2021/3460)

Brussels, 30th July 2021

Dear Madam, Sir,

In accordance with Article 7(2) of Regulation No 1049/2001, the Coalition for Fair Fisheries Arrangements (CFFA), hereby submits this confirmatory application following the refusal of the Commission's DG MARE to provide access to the entire Audit report on the external fleet (the Audit), as request submitted on 26 of May (Ref GestDem 2021/3460).

In the Decision sent on 14 of July, the Commission provides a reply which is almost void of true content. This does not answer our request, whereas the Audit contains available information, which is no longer subject to confidentiality since the EU Pilot has been closed. Actually, only the table of contents of the Audit has been disclosed.

Allow us to remind you that our request was clear: *"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"*.

With the phrase *"in particular those (...) African countries"*, we just specified that we would pay particular attention on the Italian fleet fishing in African countries. In that way, we implicitly reminded you the purposes of our organization. But we did ask for the entirety of the Audit report, not for a part, or some parts, of it: *"our organization requests access to the documents of the audit report"*.

In addition, about the rare elements contained in the Commission reply, allow us to remain quite circumspect to read that *"To be issued their DA, the Italian vessels active under private licenses need to provide MIPAAF with the legislation in force for the various fishing areas, delivered by the coastal State concerned to the vessel operators"*, while, in its pre-closure letter of the complaint (CHAP(2019)00315, 06/04/2021), it said that *"The Commission services are*

cautious in relying on the open source platform as our experts have drawn attention to the fact that the lack of exact nautical maps for the delimitation of Sierra Leone IEZ creates difficulties in identifying the actual illegal activities from those being carried out outside the IEZ”.

Therefore, since the issue has been cleared, there is no longer confidentiality on it. We hardly believe that there is nothing more about that issue in the audit report, unless this report is not really exhaustive. To some degree, for us, this underlines a quite contradictory approach.

Moreover, in its letter, DG MARE focuses on personal data which cannot be disclosed, due to the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001.

Our organization considers that the Commission has arbitrarily extended the interpretation of this article 4(1) and of article 113 of Regulation No 1224/2009. As well-established case-law, exceptions to the right to access to information must be, as an exception, be narrowly interpreted. For example, data related to fishing vessels are not personal data. However, the grounds for non-disclosure have not been specified in the Commission’s reply. This clearly breaches the duty to state reasons for the refusal, as required in accordance with Article 8 of Regulation No 1049/2001.

We also recall that this obligation to communicate information on fishing activities in external waters by European fleets falls also under Article 39(2) of the SMEFF Regulation No 2017/2403, which provides that “ *The list of all fishing authorisations issued under Titles II and III in the database shall be publicly accessible and contain all of the following information: (a) the name and flag of the vessel and its CFR and IMO numbers where required under Union law; (b) the type of authorisation including target species or species group(s); and (c) the authorised time and area of fishing operation (start and end dates; fishing area)*”.

Finally, there is clearly an overriding public interest in disclosing the Audit. Without prejudice to the foregoing, CFFA has repeatedly expressed the need for disclosure of the Audit based on an overriding public interest in disclosure, and for transparency purposes.

Accessing this Audit is of great importance for promoting sustainable fishing by EU fleets in West Africa and is clearly in line with the transparency objectives of the EU, leader in International Ocean Governance (IOG).

Moreover, in the framework of the evaluation and fitness check of the EU’s SFPAs and as a member of the Long Distance Fleet Advisory Council (LDAC), CFFA needs to be able to access the information necessary to substantiate our experiences in working with partners and in third countries, in order to conduct our fact-finding work and analyses.

Eventually, it is worth reiterating that access to the Audit is essential in the fight against Illegal, Unreported, and Unregulated (IUU) fishing, and the zero-tolerance policy that the EU proclaims, which should also apply to its own fleet.

In accordance with Article 8 of Regulation No 1049/2001, we look forward to receiving your response within 15 working days.

Yours faithfully,



Beatrice Gorez
CFFA coordinator