



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND
FISHERIES

The Director-General

Brussels
MARE/E4

*By registered letter with acknowledgment
of receipt*

Mrs Beatrice Gorez
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Advance copy by e-mail:
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Dear Madam,

**Subject: Your application for access to documents – Ref. GestDem No
2020/7441**

We refer to your e-mail dated 30/11/2020 in which you make a request for access to documents, registered on 1/12/2020 under the above mentioned reference number. Please accept our apologies for the delay of our reply.

You request access to:

- the fishing authorisations granted to the KAPITAN MORGUN (LVA000005026) and the FISHING SUCCESS (LVA000005014) fishing vessels in the framework of the current Mauritania Sustainable Fisheries Partnership Agreement protocol;
- documents containing the name, city, country of residence of the owner of the KAPITAN MORGUN (LVA000005026);
- documents containing the name, city, country of residence of the owner of the FISHING SUCCESS (LVA000005014);
- documents containing the name, city, country of residence of the owner and of the five main beneficial owners, as well as the nature and extent of the beneficial interest held, of the Latvian company Baltreids.

We consider your request to cover documents held up to the date of your initial application, i.e. 30/11/2020.

We have identified the following documents falling within the scope of your request:

- (1) Fishing authorisation of the vessel FISHING SUCCESS, issued by the Ministère des Pêches et de l' Economie Maritime de la République Islamique de Mauritanie (document 1).
- (2) Fishing authorisation of the vessel KAPITAN MORGUN issued by the Ministère des Pêches et de l' Economie Maritime de la République Islamique de Mauritanie (document 2).
- (3) Extract from the non-public part of Union fishing authorisations database held by virtue of Article 39 of the so-called SMEFF Regulation¹ (document 3).
- (4) Fishing license application form for the vessel Fishing Success, submitted by the owner of the vessel on 9/11/2020 (document 4).
- (5) Fishing license application form for the vessel Kapitan Morgun, submitted by the owner of the vessel on 9/11/2020 (document 5).

We understand from your letter of 11 February 2021 that you do not seek access to the first two documents anymore, since you have obtained them through other means.

Having examined the other documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

Documents 3 to 5 are relevant in the framework of ongoing investigations by national authorities and by the Commission services regarding the fishing activities of the two Latvian fishing vessels concerned in Mauritanian waters. Indeed, the Commission services have contacted the Latvian authorities on this matter and requested detailed information that would allow the Commission to assess the situation. The issue is currently being investigated at national level.

Disclosure of the concerned documents therefore falls under the exception of Article 4(2), third indent of Regulation 1049/2001 which provides that the '[i]nstitutions shall refuse access to a document where disclosure would undermine the protection of [...]the purpose of inspections, investigations and audits'.

The exception under Article 4(2), third indent of Regulation 1049/2001 applies not only to investigations, inspections and audits carried out by the European Union institutions, but also to those carried out by national authorities². Indeed, according to the case-law of the European Court of Justice, the fact that the investigation in question is conducted by a public authority of a Member State and not an institution does not affect the inclusion of the documents in the scope of the third indent of Article 4(2) of Regulation (EC) No 1049/2001. It does not appear from the wording of that provision that the inspections, investigations and audits referred to are limited to those of the institutions of the European Union. That exception must therefore be interpreted as seeking to protect also

¹ Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of the external fishing fleets, OJ L 347 of 28.12.2017

² Judgment of the General Court of 12 May 2015 in case T-623/13, paragraph 44

interests specific to a Member State, such as the protection of inspections, investigations and audits conducted by the services of the authority of that Member State.

The public disclosure of these documents would thus undermine the very purpose of inspections, investigations and audits of both the national authorities and the Commission services. In this respect, your attention is drawn to the case-law of the European Court of Justice according to which an ‘investigation procedure’ does not necessarily have to have the purpose of detecting or pursuing an offence or irregularity. The concept of investigation can also cover a Commission activity intended to establish facts in order to assess a given situation³. Disclosure of the documents requested would negatively affect the ongoing investigations and influence the dialogue between the Commission and the Member State in the framework of such investigations, for which a climate of mutual trust is essential.

Moreover, the issue under investigation is closely connected to an ongoing EU Pilot (n. 9561-19) regarding the control of the Latvian external fleet and will be assessed in that framework.

In addition, since the vessels to which you refer are the subject of ongoing investigations which have not yet been concluded, we consider that there are reasons to assume that disclosure of the requested documents could affect the reputation of their owners and their commercial interests could be affected. Therefore, the exception under Article 4(2), first indent of Regulation (EC) No 1049/2001 also applies to the documents requested.

Last, you refer to the database established in accordance to the SMEFF Regulation. However, the data you are interested in obtaining are not among the data that have to be made publicly available under Article 39(2) of that Regulation. Article 42 thereof provides that the data obtained under that Regulation shall be handled in accordance with Articles 112 and 113 of the Control Regulation⁴, which include rules on the protection of personal data and on the confidentiality of certain data.

We have also examined the possibility of granting partial access to the documents concerned, in accordance with Article 4(6) of Regulation (EC) No 1049/2001.

However, it follows from the assessment made above that the requested documents are fully covered by the exceptions based on Article 4(2), first and third indents of Regulation (EC) No 1049/2001.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

In your request, you invoke in particular the right of the public to know the details of the owners of the vessels and of the company concerned in the context of suspected unlawful activities as a reason of overriding public interest. However, that public interest does not outweigh the harm that disclosure would cause to the interest protected by the exception of Article 4(2), third indent of Regulation (EC) No 1049/2001, and more specifically, the risk of jeopardizing the ongoing investigations concerning the activities of the two

³ Judgment of 7 September 2017 in case C-331/15 P, Schlyter v Commission, paragraph 47

⁴ Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy.

vessels, and the protection of the commercial interests of the companies involved (Article 4(2) first indent).

As regards the last point of your request, in particular as regards the beneficial owners of the company and the interest held, no documents corresponding to the description given in your application have been identified. Please note that in any case the exception provided for in Article 4(2) third indent of Regulation (EC) No 1049/2001 would apply.

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,

Charlina VITCHEVA