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28 February 2019

Dear Mr Vidal,

Subject: Access to documents requests with references 18/2318, 18/2412, 18/2516, 18/2518

Thank you for the documents that we received with your letter dated 4 February 2018 in relation to the above-mentioned requests (the "Requested Documents"). ClientEarth would like to take this opportunity to raise two points and to request a response from the Council. The first point relates to the Council's failure to grant access to the Requested Documents before the relevant decision-making process had concluded. The second point relates to deficiencies in the Council's documents register, which is both unsearchable and not user-friendly.

Failure to respond before the decision-making procedure had concluded

ClientEarth identified the Requested Documents as and when they were listed on the Council's Documents Register under the inter-institutional code 2018/0380(NLE) corresponding to the proposal for a Council Regulation fixing for 2019 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 (the "Regulation"). ClientEarth sought access in order to participate more effectively in the decision-making process leading to the adoption of the Regulation, by raising awareness among the public and making our own views known to decision-makers.

Although the documents were listed in the register, they were not available without submitting a request for access in accordance with Regulation 1049/2001. ClientEarth submitted the requests in the hope that we would receive the documents before the decision-making process leading to the adoption of the Regulation was concluded. We also continued to check the Council's register to verify that they had not become available in the meantime.

However, rather than granting access to the requested documents in the shortest possible timeframe, the Council invoked Article 7(3) of Regulation 1049/2001 in order to delay the reply for a further 15 working days in respect of all four requests. This article is reserved for "exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents" and therefore its use was incorrect in the circumstances. For two of the requests (Ref. 18/2318 and Ref. 18/2412), the extended deadlines expired on 16 and 25 January 2019 respectively. Still, the Council did not grant access until 4 February 2019.

According to the Council's website, "*[a]fter all-night negotiations, the Council reached agreement on 2019 catch limits for the 89 main commercial fish stocks in the area*" at its meeting on 17-18 December 2018. Therefore, the documents were disclosed to ClientEarth almost seven weeks after the decision-making process had effectively come to an end. In addition to this, the vast majority of the documents listed on the Council's documents register under inter-institutional code 2018/0380(NLE) were only made available to the general public for download well after the December Council.

The participatory rights laid down in Article 10(3) TEU entail that access to legislative documents must be granted while the relevant decision-making process is ongoing. This was recognised by the Court of Justice of the EU in case C-57/16 when it stated at paragraph 84, "*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 ...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.*"

The European Parliament has also recently adopted a resolution, which states that, "*ensuring that citizens are able to understand, follow in detail and participate in the progress of legislation is a legal requirement under the Treaties and a basic requirement for a modern democracy*".¹

¹ European Parliament resolution of 17 January 2019 on the Ombudsman's strategic inquiry OI/2/2017 on the transparency of legislative discussions in the preparatory bodies of the Council of the EU (2018/2096(INI))

Deficiencies in the Council's documents register

In addition, both the [European Parliament](#) and the [Ombudsman](#)² have called for the Council to improve the user friendliness and searchability of its documents register to allow the public to identify which documents it wants to access. In this respect, ClientEarth agrees with these institutions that the Council's documents register is far from user friendly. It does not allow the public to understand the kind of information that the documents contain and, therefore, whether they may want to request access. For example, many of the documents listed under the inter-institutional code mentioned above bear the same title, which is that of the Commission's proposal, even though their content is different and they are authored by different actors in the decision-making process. Furthermore, we found a number of documents that are relevant to the draft Regulation but which do not bear the relevant inter-institutional code. These documents do not appear when the inter-institutional code is used to search for information related to the draft Regulation. What's more, they are still unavailable through direct download as at the date of this letter. See, for example, the following documents:

- https://www.consilium.europa.eu/register/en/content/out?&typ=ENTRY&i=ADV&DOC_ID=ST-14385-2018-ADD-1-REV-1
https://www.consilium.europa.eu/register/en/content/out?&typ=ENTRY&i=ADV&DOC_ID=ST-15445-2018-INIT
- https://www.consilium.europa.eu/register/en/content/out?&typ=ENTRY&i=ADV&DOC_ID=ST-15624-2018-INIT
- https://www.consilium.europa.eu/register/en/content/out?&typ=ENTRY&i=ADV&DOC_ID=ST-14649-2018-INIT

ClientEarth respectfully requests a response to this letter within one month, i.e. 28 March 2019, setting out the Council's position on the points raised.

Yours sincerely,

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² Special Report of the European Ombudsman in strategic inquiry OI/2/2017/TE on the transparency of the Council legislative process, 15.5.2018.

