

## **Request for an inspection in case 640/2019/TE on Council's lack of transparency in the decision-making process leading to the adoption of regulations setting fishing quotas (total allowable catches)**

Correspondence - 10/05/2019

**Case 640/2019/TE - Opened on 10/05/2019 - Recommendation on 25/10/2019 - Decision on 29/04/2020 - Institution concerned** Council of the European Union ( Maladministration found ) |

Mr Jeppe Tranholm-Mikkelsen

Secretary-General

Council of the European Union

Strasbourg, 10/05/2019

Complaint 640/2019/TE

**Subject:** Inspection [1] meeting concerning the transparency of the Council's decision-making process for adopting annual regulations setting fishing quotas (total allowable catches)

Dear Mr Tranholm-Mikkelsen,

I have received a complaint from Ms Anne Friel on behalf of the charity ClientEarth against the Council of the European Union.

The complaint is about the alleged lack of transparency of Council's decision-making process in the area of fisheries. Specifically, the complaint is about how Council adopts the annual regulations setting the 'total allowable catches' (TACs) of fish stocks in the Northeast Atlantic for 2017, 2018 and 2019 (the TAC Regulations). The complaint concerns Council's:

(1) failure to record the positions of Member States expressed in working groups, COREPER ambassador meetings and ministerial meetings of the Council;



(2) failure to provide timely access to 'legislative documents' [2] (proactively and upon request); and

(3) register of documents, which the complainant argues is incomplete and not user-friendly.

As I am sure you agree, transparency is essential to enable European citizens to participate effectively in the EU's decision-making process and to hold those involved to account. Unless documents are made available in a timely way, interested third parties with relevant expertise cannot provide critical input that can be taken on board by decision-makers. Given the public interest in sustainable fishing and sustainable fishing communities, from environmental, social and economic perspectives, I have decided to open an inquiry into this complaint.

For the purposes of my inquiry, it is necessary to inspect [3] :

· **all documents held by Council related to the decision-making process for adopting the annual TAC Regulations for EU fish stocks in the Northeast Atlantic for 2018 [4] and 2019 [5] .**

This should include:

- all related documents published and/or listed in Council's register of documents;
- all related documents not published and/or listed in Council's register of documents;
- all related documents marked with the relevant interinstitutional codes (2017/0287 for 2018 and 2018/0380 for 2019); and
- all related documents not marked with the above-mentioned interinstitutional codes.

· **any records held by Council of the “ *internal consultations* ” [6] related to the examination of the 27 documents covered by the complainant's four initial requests for access to documents 18/2318, 18/2412, 18/2516 and 18/2518 .** This should help enable us to determine whether the time it took Council to reply to the complainant's initial requests was reasonable.

In addition, I consider it necessary for my inquiry team to meet with the relevant Council staff members to clarify the following concerns raised by the complainant:

- that, in Council's response (15/c/01/18) to the complainant's confirmatory application of 21 June 2018, not all documents falling within the scope of the complainant's request for access to documents (18/0747) were identified (and thus disclosed), most notably the relevant “ *Working Party records* ”.
- that, apart from the Commission's proposals, all other documents listed in the register of documents as being related to the decision-making process for adopting the annual TAC Regulations for 2018 and 2019 were not available for the public to download until after the decision-making process had come to an end.
- that there is a lack of documents with information on how the proposed and agreed quota adjustments (top-ups/deductions) were calculated, to take account of the implementation of the landing obligation, as well as on the agreed figures.



- that Council's register of documents is incomplete, as it does not list all documents related to the decision-making process for adopting the annual TAC Regulations for 2018 and 2019.

During the meeting, it would be helpful if the Council staff members present could provide any additional information or observations on the complaint that Council believes would be helpful to my inquiry.

I would be grateful if your office could contact Ms Tanja Ehnert to agree the arrangements for the inspection meeting to take place before 30 June 2019.

Thank you for your co-operation on this matter.

Yours sincerely,

Emily O'Reilly

European Ombudsman

[1] Information gathering and inspections of documents are carried out on the basis of Article 3(2) of the Statute of the European Ombudsman (<http://www.ombudsman.europa.eu/en/resources/statute.faces#hl2> [Link]) and Article 4 of the European Ombudsman's Implementing Provisions: <http://www.ombudsman.europa.eu/en/resources/provisions.faces#hl3> [Link].

[2] Article 12(2) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents 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*".

[3] Information or documents that your institution considers to be confidential will not be disclosed to the complainant or any other person without the prior agreement of the Council. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended, in accordance with Articles 4.8 and 9.4 of the European Ombudsman's Implementing Provisions: <https://www.ombudsman.europa.eu/en/resources/provisions.faces> [Link]

[4] Council Regulation (EU) 2018/120 of 23 January 2018 fixing for 2018 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:



<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32018R0120> [Link].

[5] Council Regulation (EU) 2019/124 of 30 January 2019 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:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0124> [Link].

[6] As referred to by the General Secretariat of the Council in its letter to the complainant of 9 April 2019 (Ref. Access to documents requests with references 18/2318, 18/2412, 18/2516, 18/2518).