



TRIBUNALTAL-APPELLIDWARL- INFORMAZZJONIUL- PROTEZZJONITAD-DATA

Appell numru 26/2016

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar (Mepa) li
b'digriet tal-5 ta' Mejju 2016 l-atti gew trasfuzi f'isem l-Awtorita
tal-Ippjanar u l-Awtorita tal-Ambjent u r-rizersi**

Vs

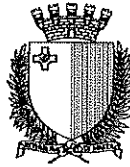
**Il-Kummissarju ghall-informazzjoni u l-Protezzjoni tad-Data u
b'digriett tal-5 a' Mejju 2016 gew kjamati in kawza Greenpeace
International u d-Dipartiment tas-Sajd u l-Akwakultura**

Decision 14th September 2017

Chairman: Dr Anna Mallia LL.D., LL.M. (Lond), Dip.Tax

Members: Mr Charles Cassar M.B.A.(Exec.), Dip.Lab.Stud., Cert.Mediator (UK)

Mr David Bezzina HNDip C.S., BSc IT (Hons)

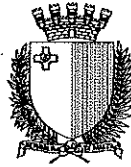


The Tribunal

In view of the circumstances of the case the decision is being given in the English language.

This is an appeal from the Commissioner's decision dated 13 November 2015 to the request made by Greenpeace International for the disclosure of the following documents:

- (1) Letter addressed by the European Commission to the Maltese authorities on 15 April 2010 concerning the transfer of Atlantic Bluefin tuna (hereinafter referred to as "BFT") from Tunisia to Malta by the trawlers 'Aretuza' and 'Leovita' on 20 -22 March 2010;
 - a. Reply by the Maltese authorities of 28 April 2010 including the relevant annexes namely:
 - b. Copy of Bluefin tuna Catch document (hereinafter referred to as "BCD") TN-09-93-0040 and TN-09-93-0047
 - c. Copy of the International commission for the conservation of Atlantic tuna (hereinafter referred to as "ICCAT" circular 1339/09
 - d. Two observer reports from Tunisia
 - e. Authorisation from Tunisia
 - f. Commercial information on BCD TN-09-93-0040 and TN -09-93-0047
 - g. Malta Inspection reports for 'Aretuza' and 'Leovita
 - h. Pre-notifications of transfer of BFT to fattening farm.
- (2) Letter addressed to the Maltese authorities by the European commission in response on 14 June 2010
- (3) Reply by the Maltese authorities of 21 June 2010 including all its annexes namely:



- a) Authorisation from Tunisia
- b) Malta inspection report on BFT transfer from vessels 'Mohsen and 'Alexandre' to vessels 'Aretuza' and 'Leovita#
- c) ICCAT transfer declarations between catching vessels and tugs to farm in Tunisia
- d) Caging declarations for caging in Malta
- e) Malta Inspections reports for 'Aretuza' and 'Leovita#Observers' BFT reports from the harvest on 7 and 8 April 2010
- f) Observations from the operator.

(5) Commission Decision C (2010) 7791 of 12 November 2010 information Malta of identified irregularities in the field of controls of BFT activities and requesting it to open an administrative inquiry based on article 102(2) of Council regulation (EC) No 1224/2009, including its Annex 1 (summary of the main irregularities identified, non -exhaustive) and its annex II (Guidelines to conduct the administrative inquiry);

(6) Final report on the administrative inquiry and issues surrounding the implementation of the provisions governing the BFT fisheries by the Maltese authorities released on 11 February 2011 by the Internal Audit and Investigations Department of Malta;

(7) The European Commission's evaluation of the report mentioned in the previous point, communicated to Malta at the occasion of a technical meeting held on 18 March 2011 and transmitted by e-mail to the Maltese Permanent Representation of Wednesday 23/03/2011;

(8) Commission Decision C (2011) 6257 of 12 September 2011 establishing an action plan to overcome shortcoming in the Maltese fisheries control system.

In his decision the Commissioner ruled as follows:

- (1) Letter addressed by the European Commission to the Maltese authorities on 15 April 2010 concerning the transfer of Atlantic bluefin tuna (hereinafter referred to as "BFT") from Tunisia to Malta by the trawlers 'Aretuza' and 'Leovita' on 20 -22 March 2010;



Decision: this document may be withheld and did not accede Greenpeace request.

- a) Reply by the Maltese authorities of 28 April 2010 including the relevant annexes namely:
Decision: to be provided as it is environmental information
- b) Copy of Bluefin tuna Catch document (hereinafter referred to as "BCD") TN-09-93-0040 and TN-09-93-0047:
Decision: to be provided as it is environmental information
- c) Copy of the International commission for the conservation of Atlantic tuna (hereinafter referred to as "ICCAT" circular 1339/09:
Decision: to be provided as it is environmental information
- d) Two observer reports from Tunisia—
Decision: to be provided as it is environmental information insofar as these reports contain information relating to the BFT catch namely the number of fish and weight and other related information.
- e) Authorisation from Tunisia-
Decision: to be provided as it is environmental information insofar as this certificate of authorisation contains information relating to the BFT catch namely the number of fish and weight together with information on their transshipment, such relevant extracts .
- f) Commercial information on BCD TN-09-93-0040 and TN -09-93-0047 –
Decision: not to be provided as this is commercial information.
- g) Malta Inspection reports for 'Aretuza' and 'Leovita' –
Decision: these reports refer to BCD TN-09-93-0040 and TN-09-93-0047 insofar as information on the fish on board is concerned which documents have been reviewed in annex A above and consequently information is to be provided in terms of the same review.
- h) Pre-notifications of transfer of BFT to fattening farm –
Decision: insofar as these reports contain information relating to the BFT catch namely the number of fish and weight and other related information such relevant extracts should be made available to the applicant.



(12) Letter addressed to the Maltese authorities by the European commission in response on 14 June 2010 –

Decision: insofar as this communication contains actual information relating to the BFT catch namely the number of fish and weight and other related information, rather than requests for information, such relevant extracts should be made available to the applicant.

(13) Reply by the Maltese authorities of 21 June 2010 including all its annexes namely:

Decision: Insofar as this document contains information relating to the transfer and caging of BFT as opposed to information relating to the vessels involved in the catch, this should be made available to the applicant.

a) Authorisation from Tunisia

Decision: this document from Tunisian authorities certified and provides detail of and transshipment of fish. Insofar as this document contains information relating to the transfer and caging of BFT as opposed to information relating to the vessels involved in the catch, this should be made available.

b) Malta inspection report on BFT transfer from vessels 'Mohsen and 'Alexandre' to vessels 'Aretuza' and 'Leovita'

Decision: any environmental information is to be made available in terms of the review to Document 2 annex F

c) ICCAT transfer declarations between catching vessels and tugs to farm in Tunisia

Decision: a total of eight transfer declarations have been provided. Insofar as these declarations contain information relating to the fish involved in the transfer namely the number and weigh and other related information, such relevant extracts should be made available to the applicant.

d) Caging declarations for caging in Malta

Decision: two caging declarations were provided relating to BCD TN-09-93-0040 and TN-09-93-0047 respectively. insofar as these declarations contain information relating to the caged fish namely the quantity and other relation information, should be made available.



- e) Malta Inspections reports for 'Aretuza' and 'Leovita'

Decision: insofar as these respective reports contain information on the fish found on the respective vessels, such information should be made available to the applicant.

- f) Observers' BFT reports from the harvest on 7 and 8 April 2010

Decision: insofar as these two reports contain information relating to the fish involved in the harvest this should be made available to the applicant including the relevant statistical data collected by the observers.

- g) Observations from the operator.

Decision: this should not be made available.

(5) Commission Decision C (2010) 7791 of 12 November 2010 information Malta of identified irregularities in the field of controls of BFT activities and requesting it to open an administrative inquiry based on article 102(2) of Council regulation (EC) No 1224/2009 , including its Annex 1 (summary of the main irregularities identified, non -exhaustive) and its annex II (Guidelines to conduct the administrative inquiry);

Decision: such information is to be made available

(6) Final report on the administrative inquiry and issues surrounding the implementation of the provisions governing the BFT fisheries by the Maltese authorities released on 11 February 2011 by the Internal Audit and Investigations Department of Malta;

Decision: insofar as this final report refers to information which is classified as environmental in terms of the EIR such as reference to the BFT their caging, harvesting, etc together with measures in their regard this should be provide to the applicant.

(7) The European Commission's evaluation of the report mentioned in the previous point, communicated to Malta at the occasion of a technical meeting held on 18 March 2011 and transmitted by e-mail to the Maltese Permanent Representation of Wednesday 2303/2011;

Decision: such information is to be made available.

(8) Commission Decision C (2011) 6257 of 12 September 2011 establishing an action plan to overcome shortcomings in the Maltese fisheries control system.



Decision; document was not held by MSDEC and the commissioner was admonished for not complying with regulation 4(1) of the environmental Information Regulations.

In her appeal MEPA, which is now obsolete and replaced by the Planning Authority and the Authority for the Environment and Resources and therefore the appeal now falls under the remit of the latter authority, is requesting this Tribunal to revoke the decision of the Commissioner since he failed to abide by the regulations in subsidiary legislation 504.6 in the sense that he made no distinction between environmental information and request for documents; that according to regulation (2) of Council Regulation (EC) No 1224/2009 dated 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy as subsequently amended expressly prohibits the disclosure of information which is directly applicable in the national legal order by virtue of EU law or the European Union Act (Chapter 460 of the Laws of Malta) and insofar as affecting certain documents it makes their disclosure impossible in full and is requesting the Tribunal to declare and pronounce itself as follows:

- I. That in his decision notice the Commissioner has failed to consider the distinction between a request of environmental information and a request for documents
- II. That a direct request for documents is beyond the scope of the obligations incumbent on the competent authority and other public authorities under S.L.504.65 and
- III. That applications for access under regulations 3, 4 and 5 of SL 504.65 relate to environmental information and fishing expeditions for such environmental information through a request to access documents is beyond the scope for the obligations under SL 504.65 and
- IV. That the competent authority and other public authorities cannot be obliged to scour through requested documents for the provision of environmental information and that such a task is beyond their responsibilities and obligations under SL 504.65 and
- V. That the Commissioner has incorrectly considered contents of the requested documents as environmental information while these are not so in so far as they have become the private property of commercial operators and as such contents do not fall under the provisions of SL 504.65 and cannot be disclosed thereunder and
- VI. That the Commissioner has incorrectly interpreted or fail to consider Article 113(2) of the Control Regulation and the prohibition found thereunder as



affecting particular data and, or documents exchanged between the Member States (including Malta) and the European commission and as such any such data and or documents cannot be disclosed under the provisions of SL 504.65 by virtue of such probation which prevails over the provisions of national by virtue of EU Law and the European Union Act (Chapter 460 for the Laws of Malta. .

Having seen the reply filed by the Commissioner in which he requests that the appeal be rejected and his decision confirmed since it was based on the subsidiary legislation 504.65 and it is not true that he failed to make the distinction between environmental information and request for documents, ; that he gave due consideration to the provisions of Council Regulation (EC) 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, to the provisions of SL 504.65 which transposes Directive 2003/4EC on public access to environmental information which in turn is consistent with the Aarhus Convention wo which Malta is a party.

Having seen the reply submitted by Greenpeace International that the information requested about Bluefin tuna because of its removal from its habitat is environmental information as it is requesting information of wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements, the removal of Bluefin tuna from its habitat, the transporting, caging and treatment thereto, among others are precisely the activities that may affect or are likely to affect biological diversity and its components, marine areas and the interaction of these elements and that the decision of the Commissioner should therefore be withheld.

Having seen all the evidence submitted;

The Tribunal considers the following:

Legal considerations

Malta transposed Directive 2003/4/EC granting the public the right of access to environmental information via the Freedom of Access to Information on the environment Regulations (LN 116/2005) and was subsequently amended by LN 298.12.

That according to Regulation 2 of Legal Notice 116/2005 (SS 549.39),
'Environmental information' means any information in written, visual, aural,



electronic or any other material form on:

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c). That regulation 12 of the same legal notice states that Part IV of the Freedom of Information Act other than article 26 as well articles 29, 40 and 43 of the same Act shall apply mutatis mutandis to requests for information under this article saving certain provisions which do not apply to this appeal.

That refusal to provide environmental information is governed by regulationn7 of the same legal notice if (a) the request is manifestly unreasonable; (b) without prejudice to the provisions of regulation 4(3) the request is formulated in too general a manner; (c) the request concerns material in the course of completion or unfinished documents or data, provided that in this case, the competent authority, shall state the name of the authority preparing the material and the estimated time needed for completion; the request concerns internal communication, taking into



account the public interest served by disclosure. (note by the tribunal regulation 4(3) does not exist in this legal notice but it exists in Directive 2003/4/EC Directive 2003/4/EC).

Other reasons for refusal are listed in regulation 7(2) which states that such refusal is allowed if the requested environmental information if disclosed would adversely affect:

- (a) the confidentiality of the proceedings of public authorities where such confidentiality is provided for by law;
- (b) international relations, public security or national defence;
- (c) the course of justice, the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
- (d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy; intellectual property rights; the confidentiality of personal data and, or filed relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law;
- (g) the interests or protection of any person who supplied the information requested on a voluntary basis without being under or capable or being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned;
- (h) the protection of the environment to which such information relates, such as the location of rare species.

Sub-paragraph (3) of the same legal notice 7, states that these grounds of refusal shall be interpreted in a restrictive way taking into account for the particular case the public interest served by disclosure and in every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal.

These exceptions to the general rule in favour of access to environmental information exist to protect certain legitimate interests which would be harmed by disclosure of information in a particular case. In order that the exceptions in any legal instrument not overwhelm the right of access, they should be specified in clearly-defined terms and invoked only after balancing the harm disclosure would cause against the public interest in access to information.

The Directive, like most legal instruments regulating access to information,



includes exceptions designed to protect the confidentiality of international relations, national defence, public security and personal privacy. Other exceptions of particular importance for environmental information requests concern confidential commercial and industrial information; matters under inquiry; information voluntarily supplied; and internal communications and unfinished documents.

Commercial confidentiality interests can be protected by an exception strictly limited to information which is a confidential trade secret - that is information not known to parties other than the company and the public authority - the release of which would significantly harm the company and assist its competitors. If commercial confidentiality is understood to protect any information which affects a company, then access to much environmental information will be denied. Moreover, the company in question should have actively indicated its desire that the information concerned be given confidential treatment, preferably when it supplied it to the public authority. In the Netherlands, if confidential commercial information has been removed from a document before its release, a so-called 'second text' must be supplied. This redacted document indicates where information has been removed and, in a general way, the substance of the information withheld.

An exemption for proceedings and inquiries can best be limited to ongoing court proceedings and investigations that might result in criminal charges. The exemption should not apply to legislative proceedings.

In access to information systems with a list of exceptions which protect legitimate interests in confidentiality, there is no need for a further exemption for voluntarily supplied information. The other exceptions provide protection for confidential information based on its contents - not on the manner by which the public authority obtained it. Moreover, in systems where mandatory reporting of environmental information to public authorities is less well developed, a correspondingly greater amount of environmental information may be obtained voluntarily. In such systems, an exception for voluntarily supplied information threatens to exclude much of the available information from public access.

Any exemption for unfinished documents should be limited in time and not apply to any documents which have been used or considered by a public authority in arriving at a decision.



On 23 November 2016, the Court of Justice of the European Union ("CJEU") delivered two important judgments in cases C-442/14 *Bayer CropScience and Stichting De Bijenstichting* and C-673/13 *PCommission v Stichting Greenpeace Nederland and PAN Europe* which, although factually different, address the same issue – i.e. the right of access to environmental documents, and in particular, the scope of the concept of "information on emissions into the environment".

1. Background

In Case C-442/14, *Bijenstichting*, a bee-protection association in the Netherlands, submitted a request to the Dutch plant protection and biocidal products authority ("ctgb") for the disclosure of 84 documents concerning marketing authorisations of certain plant protection products. Since Bayer was holding a large number of those authorisations, it objected to that disclosure, on the ground that disclosure would infringe its copyrights and adversely affect the confidentiality of commercial or industrial information. In 2013, ctgb provided access to 35 of the 84 requested documents, on the ground that they contained information on emissions into the environment under Directive 2003/4/EC on public access to environmental information, and regardless of the fact that such a disclosure could have an adverse effect on the confidentiality of commercial or industrial information. According to this directive, commercial and industrial confidentiality may not be invoked to preclude the disclosure of such information. Both *Bijenstichting* and Bayer appealed the ctgb's decision before a national court, which referred the matter for a preliminary ruling to the CJEU.

In Case C-673/13 P, the associations *Stichting Greenpeace Nederland* and *Pesticide Action Network Europe* ("PAN Europe") submitted a request to the Commission under Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies. The request concerned access to a number of documents relating to the initial marketing authorisation for the pesticide substance glyphosate. The Commission granted access to those documents, with the exception of some parts of the draft assessment report ("DAR") prepared by the Rapporteur Member State ("RMS"), Germany. The Commission justified its refusal on the ground that the document in question contained confidential information on intellectual property rights of applicants for the glyphosate authorisation – i.e. the detailed chemical composition of the substance, its



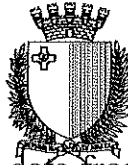
manufacturing process, and the impurities and composition of the finished products.

The two associations brought an appeal before the EU General Court, which ruled in their favour (case T-545/11) stating that certain parts of the requested document contained information relating to emissions into the environment, and therefore, the Commission was not entitled to invoke the confidentiality of commercial and industrial information and should have granted the associations access to those parts of the file.

2. Ruling

In the two judgments, the CJEU clarified what must be understood by "emissions into the environment" and "information on [or which relates to] emissions into the environment" 'within the meaning of Directive 2003/4/EC and Regulation (EC) No 1367/2006. Specifically, according to the Court:

- The notion of "emissions into the environment" includes the release into the environment of products or substances, such as plant protection products or biocides or active substances contained in those products, to the extent that that release is actual or foreseeable under normal or realistic conditions of use of the product or substance;
- Consequently, this notion is indistinguishable from the concepts of "release" and "discharge" and cannot be restricted to emissions emanating from industrial installations (e.g. factories and power stations) but also covers emissions resulting from the spraying of a product, such as a plant protection product or biocide, into the air or its use on plants, in water or on soil. This approach is in line with the objective of the regulation and directive on environmental information which is to disclose that type of information as widely as possible.
- The regulation and directive cover not only information relating to actual emissions (i.e. emissions which are actually released into the environment when a plant protection product or a biocide is used on plants or in soil), but also information on foreseeable emissions from products into the environment.
- However, the Court considers that the concept of information on emissions into the environment does not include information relating to purely



hypothetical emissions – e.g., data from tests to study the effects of the use of a dose of a product which is significantly above the maximum dose for which the marketing authorisation was granted and which is used in practice.

- Finally, the concept of "information on emissions into the environment" must be interpreted as covering not only information on emissions as such (i.e. information relating to the nature, composition, quantity, date and place of those emissions) but also information enabling the public to check whether the assessment of actual or foreseeable emissions, on the basis of which the competent authority authorised the product or substance in question, is correct, as well as the data relating to the medium or long-term effects of those emissions on the environment. In particular, that concept covers information relating to residues in the environment after the product has been used, as well as studies on the measurement of the substance's drift during that use, irrespective of whether those data come from studies performed entirely or in part in the field, from laboratory studies or translocation studies.
- On the basis of the foregoing, the CJEU set aside the judgment of the General Court in case C-673/13 P and referred back the case for a second review, stating that Regulation (EC) No 1367/2006 covers information which "relates to emissions into the environment", that is to say information which concern or is relevant to such emissions and not information containing any link at all, direct or indirect, to emissions into the environment.

3. Comments

The conclusions reached by the CJEU in these two judgments have far-reaching consequences for EU manufacturers of plant protection products and biocides.

Firstly, the CJEU interprets the notion of "information on emissions into the environment" in an extensive way such that a wide range of information concerning the assessment of plant protection products and biocides may be made available to the public.



Secondly, the exceptions to the access of environmental information are to be construed narrowly. Notably, according to these two judgements, confidential information linked to the commercial or industrial interests, such as the detailed chemical composition of the substance, its manufacturing process, and the impurities and composition of the finished products, may have to be disclosed if such information is considered to be related to the "emissions into the environment".

It is also worth noting that some Member States have followed a similar approach in the past. For example, the French Commission on Access to Administrative Documents ("CADA") interprets the notion of "information on emissions into the environment" in a similar way as the CJEU. Specifically, in accordance with Article L. 124-5 of the French code of the environment, CADA considers that information which is related to the impact of the use of plant protection products on human beings, animals and plants also corresponds to information related to the emission of substances into the environment which is disclosable.

Finally, it should be highlighted that these two judgments confirm the current trend which the CJEU follows regarding access to environmental documents. Indeed, according to the CJEU, exceptions to disclosure must be applied restrictively as they derogate from the general principle of widest possible access to documents on emissions to the environment.

Thus, in a judgment of 20 September 2016 (*PAN Europe v Commission*, case T-51/15), the General Court annulled the Commission's decision as it refused access to environmental documents on the basis of the exception in the first subparagraph of Article 4.3 of Regulation 1049/2001 (i.e. linked to the institution's decision-making process) because the Commission had incorrectly based its refusal to disclose the documents at issue on that exception.

The General Court considered that the application of such exception to give access to environmental information "requires it to be established that access to the document in question drawn up by the institution for its internal use was likely, specifically and actually, to undermine protection of the institution's decision-making process, and that the risk of that interest being undermined was reasonably foreseeable and not purely hypothetical " (underline added). The General court considerably restricted the scope of application of such exception linked to the



decision-making process of an institution.

Notwithstanding the above, it is important to note that the CJEU has excluded from the concept of "emissions into the environment" information that relates to purely hypothetical emissions, e.g., data resulting from tests conducted at higher doses than those actually authorised and used in practice.

This caveat is important as various studies on plant protection products, or substances contained therein, are typically conducted at much higher doses than those ultimately authorised and actually used in practice, and to which a safety factor may be added. This approach is followed routinely in the context of the assessment of plant protection products in order to derive certain toxicological/ecotoxicological endpoints for the risk assessment. This caveat could entail the application of a specific derogation from the general rule of access to documents, in cases where tests are not based on realistic or reasonably foreseeable conditions of use of the plant protection product or substance.

Furthermore, the definition of "emissions into the environment" is more specific than the definition of "environmental information".

Application of the legal basis on the facts of this appeal

(1)The Commissioner rejected the request for the publication of the letter addressed by the European Commission to the Maltese authorities on 15 April 2010 concerning the transfer of Atlantic bluefin tuna (hereinafter referred to as "BFT") from Tunisia to Malta by the trawlers 'Aretuza' and 'Leovita' on 20 -22 March 2010;

(2) Reply by the Maltese authorities of 28 April 2010 including the relevant annexes namely:

Appellant contents that this document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality.

The Commissioner ruled that this document is be provided as it is environmental information



(a) Copy of Bluefin tuna Catch document (hereinafter referred to as “BCD”) TN-09-93-0040 and TN-09-93-0047:

Commissioner: to be provided as it is environmental information

Appellant: documents do not contain environmental information

(b) Copy of the International commission for the conservation of Atlantic tuna (hereinafter referred to as “ICCAT” circular 1339/09:

Decision: to be provided as it is environmental information

(c) Two observer reports from Tunisia–

Decision: to be provided as it is environmental information insofar as these reports contain information relating to the BFT catch namely the number of fish and weight and other related information.

(d) Authorisation from Tunisia–

Decision: to be provided as it is environmental information insofar as this certificate of authorisation contains information relating to the BFT catch namely the number of fish and weight together with information on their transshipment, such relevant extracts .

(e) Commercial information on BCD TN-09-93-0040 and TN -09-93-0047 –

Decision: not to be provided as this is commercial information.

(f) Malta Inspection reports for ‘Aretuza’ and ‘Leovita –

Decision: these reports refer to BCD TN-09-93-0040 and TN-09-93-0047 insofar as information on the fish on board is concerned which documents have been reviewed in annex A above and consequently information is to be provided in terms of the same review.

(g) Pre-notifications of transfer of BFT to fattening farm –

Decision: insofar as these reports contain information relating to the BFT catch namely the number of fish and weight and other related information such relevant extracts should be made available to the applicant.



(3) Letter addressed to the Maltese authorities by the European commission in response on 14 June 2010 –

Decision: insofar as this communication contains actual information relating to the BFT catch namely the number of fish and weight and other related information, rather than requests for information, such relevant extracts should be made available to the applicant.

Appellant: document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality.

(4) Reply by the Maltese authorities of 21 June 2010 including all its annexes namely:

Decision: Insofar as this document contains information relating to the transfer and caging of BFT as opposed to information relating to the vessels involved in the catch, this should be made available to the applicant.

Appellant: document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality.

a. Authorisation from Tunisia –

Decision: this document from Tunisian authorities certified and provides detail of and transshipment of fish. Insofar as this document contains information relating to the transfer and caging of BFT as opposed to information relating to the vessels involved in the catch, this should be made available.

Appellant: document does not contain environmental information.

b. Malta inspection report on BFT transfer from vessels 'Mohsen and 'Alexandre' to vessels 'Aretuza' and 'Leovita'

Decision: any environmental information is to be made available in terms of the review to Document 2 annex F



- c. ICCAT transfer declarations between catching vessels and tugs to farm in Tunisia

Decision: a total of eight transfer declarations have been provided. Insofar as these declarations contain information relating to the fish involved in the transfer namely the number and weigh and other related information, such relevant extracts should be made available to the applicant.

- d. Caging declarations for caging in Malta

Decision: two caging declarations were provided relating to BCD TN-09-93-0040 and TN-09-93-0047 respectively . insofar as these declarations contain information relating to the caged fish namely the quantity and other relation information, should be made available.

- e. Malta Inspections reports for 'Aretuza' and 'Leovita'

Decision: insofar as these respective reports contain information on the fish found on the respective vessels, such information should be made available to the applicant.

- f. Observers' BFT reports from the harvest on 7 and 8 April 2010 .

Decision: insofar as these two reports contain information relating to the fish involved in the harvest this should be made available to the applicant including the relevant statistical data collected by the observers.

- g. Observations from the operator.

Decision: this should not be made available.

(5) Commission Decision C (2010) 7791 of 12 November 2010 information Malta of identified irregularities in the field of controls of BFT activities and requesting it to open an administrative inquiry based on article 102(2) of Council regulation (EC) No 1224/2009 , including its Annex 1 (summary of the main irregularities identified, non -exhaustive) and its annex II (Guidelines to conduct the administrative inquiry);



Decision: such information is to be made available

Appellant: document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality and document does not contain environmental information.

(6) Final report on the administrative inquiry and issues surrounding the implementation of the provisions governing the BFT fisheries by the Maltese authorities released on 11 February 2011 by the Internal Audit and Investigations Department of Malta;

Decision: insofar as this final report refers to information which is classified as environmental in terms of the EIR such as reference to the BFT their caging, harvesting, etc together with measures in their regard this should be provided to the applicant.

Appellant: document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality and document does not contain environmental information

(7) The European Commission's evaluation of the report mentioned in the previous point, communicated to Malta at the occasion of a technical meeting held on 18 March 2011 and transmitted by e-mail to the Maltese Permanent Representation of Wednesday 23/03/2011;

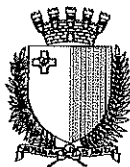
Decision: such information is to be made available.

Appellant: document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality and document does not contain environmental information.

(8) Commission Decision C (2011) 6257 of 12 September 2011 establishing an action plan to overcome shortcomings in the Maltese fisheries control system.

Decision; document was not held by MSDEC and the commissioner was admonished for not complying with regulation 4(1) of the environmental Information Regulations.

Appellant: document is not held by the Ministry for Sustainable Development, the Environment and Climate Change.



Although it would have been wiser for Greenpeace International to be precise in the kind of information it is requesting from the documents requested, such information is provided in its reply to the appeal by the Authority. Greenpeace International explains in its reply the information requested about Bluefin tuna is because of its removal from its habitat is environmental information as it is requesting information of wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements, the removal of Bluefin tuna from its habitat, the transporting, caging and treatment thereto, among others are precisely the activities that may affect or are likely to affect biological diversity and its components, marine areas and the interaction of these elements and that the decision of the Commissioner should therefore be withheld.

Therefore, the Tribunal decides as follows:

Doc 1 – is not to be published as per decision of the Commissioner and Greenpeace did not appeal from this decision.

Doc 2 - Reply by the Maltese authorities of 28 April 2010 including the relevant annexes namely:

Appellant contents that this document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality.

The Commissioner ruled that this document is to be provided as it is environmental information.

Decision of Tribunal: there was no reply from the Maltese authorities on 28 April 2010 and the decision of the Commissioner is being revoked in this regard.

(a) Copy of Bluefin tuna Catch document (hereinafter referred to as “BCD”) TN-09-93-0040 and TN-09-93-0047:

Commissioner: to be provided as it is environmental information

Appellant: documents do not contain environmental information

Decision of the Tribunal: - the decision of the Commissioner is being upheld as this contains environmental information.



(b) Copy of the International commission for the conservation of Atlantic tuna (hereinafter referred to as “ICCAT” circular 1339/09:

Decision: to be provided as it is environmental information

Decision of Tribunal – The decision of the Commissioner is upheld and information is to be provided since this is environmental information.

(c) Two observer reports from Tunisia–

Decision: to be provided as it is environmental information insofar as these reports contain information relating to the BFT catch namely the number of fish and weight and other related information.

Decision of the Tribunal – The decision of the Commissioner is upheld and information is to be provided since this is environmental information.

(d) Authorisation from Tunisia–

Decision: to be provided as it is environmental information insofar as this certificate of authorisation contains information relating to the BFT catch namely the number of size and weight together with information on their transshipment, such relevant extracts .

Decision of the Tribunal – The decision of the Commissioner is upheld and information is to be provided since this is environmental information.

(e) Commercial information on BCD TN-09-93-0040 and TN -09-93-0047 –

Decision: not to be provided as this is commercial information.

Decision of the Tribunal – the decision of the Commissioner is upheld since this is not environmental information.

(f) Malta Inspection reports for ‘Aretuza’ and ‘Leovita –

Decision: these reports refer to BCD TN-09-93-0040 and TN-09-93-0047 insofar as information on the fish on board is concerned which documents have been reviewed in annex A above and consequently information is to be provided in terms of the same review.

Decision of the Tribunal – The decision of the Commissioner is upheld and information is to be provided since this is environmental information.



(g)Pre-notifications of transfer of BFT to fattening farm –

Decision: insofar as these reports contain information relating to the BFT catch namely the number of fish and weight and other related information such relevant extracts should be made available to the applicant.

Decision of the Tribunal – The decision of the Commissioner is upheld and information is to be provided since this is environmental information.

(3) Letter addressed to the Maltese authorities by the European commission in response on 14 June 2010 –

Decision: insofar as this communication contains actual information relating to the BFT catch namely the number of fish and weight and other related information, rather than requests for information, such relevant extracts should be made available to the applicant.

Appellant: document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality.

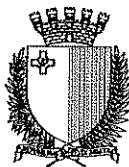
Decision of the Tribunal : this Tribunal having taken cognizance of this document, authorises the publication of only Para 2 of this letter only since it is the only part which contains environmental information.

(4) Reply by the Maltese authorities of 21 June 2010 including all its annexes namely:

Decision: Insofar as this document contains information relating to the transfer and caging of BFT as opposed to information relating to the vessels involved in the catch, this should be made available to the applicant.

Appellant: document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality.

Decision of this Tribunal: the decision of the Commissioner is upheld as it relates to environmental information which cannot be withheld.



a. Authorisation from Tunisia—

Decision: this document from Tunisian authorities certified and provides detail of and transshipment of fish. Insofar as this document contains information relating to the transfer and caging of BFT as opposed to information relating to the vessels involved in the catch, this should be made available.

Appellant: document does not contain environmental information.

Decision of this Tribunal: the decision of the Commissioner is upheld as it relates to environmental information which cannot be withheld.

b. Malta inspection report on BFT transfer from vessels 'Mohsen' and 'Alexandre' to vessels 'Aretuza' and 'Leovita'

Decision: any environmental information is to be made available in terms of the review to Document 2 annex F

c. ICCAT transfer declarations between catching vessels and tugs to farm in Tunisia

Decision: a total of eight transfer declarations have been provided. Insofar as these declarations contain information relating to the fish involved in the transfer namely the number and weigh and other related information, such relevant extracts should be made available to the applicant.

d. Caging declarations for caging in Malta

Decision: two caging declarations were provided relating to BCD TN-09-93-0040 and TN-09-93-0047 respectively. insofar as these declarations contain information relating to the caged fish namely the quantity and other relation information, should be made available.

e. Malta Inspections reports for 'Aretuza' and 'Leovita'

Decision: insofar as these respective reports contain information on the fish found on the respective vessels, such information should be made available to the applicant.

f. Observers' BFT reports from the harvest on 7 and 8 April 2010



Decision: insofar as these two reports contain information relating to the fish involved in the harvest this should be made available to the applicant including the relevant statistical data collected by the observers.

Decision of this Tribunal on (b), (c), (d), (e) and (f) is that the decision of the Commissioner is upheld as this is environmental information.

g. Observations from the operator.

Decision: this should not be made available.

Decision of the Tribunal – no appeal was made by Greenpeace and this decision is being confirmed.

(5) Commission Decision C (2010) 7791 of 12 November 2010 information Malta of identified irregularities in the field of controls of BFT activities and requesting it to open an administrative inquiry based on article 102(2) of Council regulation (EC) No 1224/2009, including its Annex 1 (summary of the main irregularities identified, non -exhaustive) and its annex II (Guidelines to conduct the administrative inquiry);

Decision: such information is to be made available

Appellant: document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality and document does not contain environmental information.

Decision of this Tribunal: this document does not contain environmental information and it is not to be made available. The decision of the Commissioner is herewith being revoked.

(6) Final report on the administrative inquiry and issues surrounding the implementation of the provisions governing the BFT fisheries by the Maltese authorities released on 11 February 2011 by the Internal Audit and Investigations Department of Malta;

Decision: insofar as this final report refers to information which is classified as environmental in terms of the EIR such as reference to the BFT their caging, harvesting, etc. together with measures in their regard this should be provided to the applicant.



Appellant: document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality and document does not contain environmental information

Decision of this Tribunal: the decision of the Commissioner is being upheld and notes that in matters concerning environmental information, confidentiality is not allowed under the directive in question.

(7)The European Commission's evaluation of the report mentioned in the previous point, communicated to Malta at the occasion of a technical meeting held on 18 March 2011 and transmitted by e-mail to the Maltese Permanent Representation of Wednesday 23/03/2011;

Decision: such information is to be made available.

Appellant: document is part of internal correspondence between Malta and the EU Commission which is covered by confidentiality and document does not contain environmental information.

Decision of this Tribunal: such document was not provided to this Tribunal but notwithstanding the Tribunal decides that the parts of this document that are classified as environmental information are to be made available for the reasons above stated.

(8)Commission Decision C (2011) 6257 of 12 September 2011 establishing an action plan to overcome shortcomings in the Maltese fisheries control system.

Decision; document was not held by MSDEC and the commissioner was admonished for not complying with regulation 4(1) of the environmental Information Regulations.

Appellant: document is not held by the Ministry for Sustainable Development, the Environment and Climate Change.

Decision of the Tribunal: the Authority is to inform the Commissioner information as to holds this documents within one month from today failure of which the Commissioner is to enforce the penalty subscribed by law.

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InformationandDataProtection
AppealsTribunal

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Dr Anna Mallia

Chairperson

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Mr Charles Cassar

Membru

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Mr David Bezzina

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