



EUROPEAN COMMISSION
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

The Director-General

Brussels,
HOME.A2-FC/sl

By registered letter with acknowledgment of receipt

Ms Luisa IZUZQUIZA

Access Info Europe
C/ Cava de San Miguel 8, piso 4 centro
E-28005 Madrid

Advance copy by email:

ask+request-2695-34bc6744@asktheeu.org

Subject: Your applications for access to documents - GestDem n°2016/4799 and 2016/4821

Dear Ms IZUZQUIZA,

We refer to the requests for access to documents, GestDem n°2016/4799 and 2016/4821, both registered on 21/09/2016.

This reply is a follow-up to an initial application you made on 5 April 2016 (Gestdem 2016/1681), dealt with by the Commission's Legal Service, followed by a Commission confirmatory decision C(2016)6029 you received on 19/09/2016.

In your initial request of April (Gestdem 2016/1681), you requested access to:

- (a) *[a]ll documents generated or received by the Commission containing the legal advice and/or analysis of the legality under EU and international law of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation O J L 134, 7.5.2014; and*
- (b) *[a]ll documents generated or received by the Commission containing legal advice and/or analysis of the legality of the actions to be carried out by the EU and its Member States in implementing the actions set out in the statement on the agreement reached with Turkey at the summit held on 7 March 2016.*

The Commission identified some documents as falling under the scope of your request, as regard point a) and b), and gave you, at initial and then confirmatory level, full access to some documents, partial access to one document and refused access to other ones. I refer you to the reasoning of the Commission confirmatory decision in this regard.

The confirmatory decision emphasized that in your confirmatory application (points 2.3 and 3.3) you ask for the confirmation that the documents identified at initial stage as falling under parts (a) and (b) of your (initial) request, are the only ones in possession of the Commission. In this respect you argue that *the Commission has failed to inform Access Info Europe whether or not, in addition to the documents that it has generated [i.e. document (1) – (8)], it holds any documents that were received from other institutions or external actors.*

In points 2.4 and 3.3 of your confirmatory application, you explain that such confirmation is necessary *to understand whether the Commission held information relating to the competence of the EU and understand compliance with EU and international humanitarian law.*

In the light of the above explanations, the confirmatory decision interpreted that the expression *any documents that were received from other institutions*, used in your confirmatory application, refers to documents (received from third parties) containing *legal advice and/or [legal] analysis*.

The confirmatory decision expressly indicated that "*it (was) limited to such documents in so far as they were in possession of the Legal Service. As regards the documents described above, in possession of other Commission services, the corresponding part of your confirmatory application has been attributed to DG HOME, as a new (initial) request*". As a follow-up, the Secretariat-General created two new requests, Gestdem 2016/4799 and Gestdem 2016/4881. The new request 2016/4881 is partly similar to the new request 2016/4799, and was created by error. You received on 21/09/2016 an acknowledgment of receipt for both cases. The present answer covers both cases.

We interpret the new request in the same way as the confirmatory answer and we identified the following documents detained or received by DG HOME.

Under point a) of your request, we regret to inform you that no document was found that would correspond to the description given in your application, completing the ones you got from the Legal Service.

Indeed, as specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no such document has been identified, the Commission is not in a position to handle your request.

Under point b) of your request, we identified the following documents:

- (1) Letter by Director General Ruete to Secretary General Papadopoulos of 5 May 2016,
- (2) Letter by Commissioner Avramopoulos to Minister Mouzalas of 29 July 2016,
- (3) UNHCR's legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept,
- (4) Letter from UNHCR to the Greek authorities of 4 May 2016.

Having examined the documents requested under the provisions of Regulation (EC) n°1049/2001 regarding public access to documents ("Regulation 1049/2001"), I am happy to inform you that I can give you full access to documents (1), (2) and (3). Documents (1) and (2) are accessible under the following link (website of the Greek asylum service): <http://asylo.gov.gr/en/wp-content/uploads/2016/10/scan-file-mme.pdf>. Document (3) is a public document, accessible under the following link: <http://www.refworld.org/docid/56f3ee3f4.html>. For your convenience, a copy of these documents is enclosed.

Having examined the document (4) requested under the provisions of Regulation (EC) n°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.

According to Article 4(1)(a), third indent of this Regulation the Commission shall refuse access to a document, where disclosure would undermine protection of the public interest as regards international relations.

The document in question contains legal advice provided by UNHCR to the Greek authorities relevant for the implementation of the EU-Turkey Statement. Divulgence of this document would present a concrete risk of compromising the climate of mutual trust essential to effective cooperation between the Commission, the national authorities of Greece and the

UNHCR in the implementation of the Statement. Public disclosure would thereby undermine the EU's international relations, for which establishing and protecting a sphere of mutual trust is essential.

According to Article 4(2), second indent of this Regulation, the Commission shall refuse access to a document, where disclosure would undermine protection of legal advice. As already mentioned, the document in question contains legal advice provided by UNHCR to the Greek authorities relevant for the implementation of the EU-Turkey Statement. Public disclosure of the document in question would have a serious impact on Greece's interest in seeking and receiving frank, objective and comprehensive legal advice. This is however an essential element in the framework of the ongoing work on the implementation of the EU-Turkey Statement.

I am therefore of the opinion that the access to the document (4) must be refused under the exception of protection of the public interest as regards international relations provided for in Article 4(1)(a), third indent, and under the exception of protection of legal advice provided for in Article 4(2), second indent of Regulation 1049/2001.

I have considered whether partial access could be granted to the document (4). For the same reasons explained above, I am of the opinion that the public interest is best served by refusing access.

The exception laid down in Article 4(2) applies unless there is an overriding public interest in disclosure of the documents. In view of the sensitivity of the matters dealt with in the document, I am of the opinion that no such overriding public interest exists in this case.

In accordance with Article 7(2) of Regulation 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
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Matthias RUETE

Enclosures:

- Document (1): letter by Director-General Ruete to Secretary-General Papadopoulos of 5 May 2016 - Ares(2016)2149549
- Document (2): letter by Commissioner Avramopoulos to Minister Mouzalas of 29 July 2016 - Ares(2016)4010162
- Document (3): UNHCR's legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept