



EUROPEAN COMMISSION  
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The Director-General (acting)

Brussels

**Subject: Your application for access to documents**

Ref.: EASE 2022/4830

Dear Mr Glioti,

I refer to your application for access to documents, registered under the above-mentioned reference number, and to our subsequent correspondence <sup>(1)</sup>. It results from this exchange of emails that your request concerns:

1. All correspondence, both formal and informal (including emails and WhatsApp messages) between the European Commission's Directorate-General for Neighbourhood and Enlargement Negotiations and the International Centre for Migration Policy Development (ICMPD) related to the Integrated Border Management project Phase III in Lebanon from 26 August 2022 <sup>(2)</sup> to 19 November 2022 <sup>(3)</sup>.
2. All minutes and any other records of the following meetings between representatives of the ICMPD and the listed Commissioners, Members of their Cabinet or Director-Generals, as documented in the EU Transparency Register: Oliver VARHELYI – 23 February 2021; Oliver VARHELYI – 24 April 2020; Emma UDWIN – 30 May 2017.

---

<sup>(1)</sup> Ares(2022)6008238, Ares(2022)6766524, Ares(2022)7869246 and Ares(2022)7768956.

<sup>(2)</sup> Kindly note that the correspondence between DG NEAR and ICMPD from 29 January 2020 until 25 August 2022 is subject to your confirmatory application before the Secretariat General of the Commission with reference 2022/4100.

<sup>(3)</sup> As per your email of 19 November 2022.

Mr Andrea GLIOTI  
The New Arab Unit 5, Central Park,  
NW10 7FY  
Central Way London,  
United Kingdom

By email only: [ask+request-11770-9980a524@asktheeu.org](mailto:ask+request-11770-9980a524@asktheeu.org)

Regarding the correspondence mentioned under point 1, we regret to inform you that the Commission does not hold any document that would correspond to the description given in your application.

Regarding the minutes of the meeting with Mrs Emma UDWIN, as indicated under point 2, we regret to inform you that the Commission does not hold any document that would correspond to the description given in your application.

As specified in Article 2(3) of Regulation (EC) No 1049/2001<sup>(4)</sup>, the right of access, as defined in that regulation, applies only to existing documents in the possession of the institution.

Regarding the minutes of the two other meetings, the following documents have been identified as falling under the scope of your request:

1. Document 1 - Commissioner VARHELYI's briefing for exchange of views with ICMPD on 23 February 2021, CAB VARHELYI/460
2. Document 2 - Commissioner VARHELYI's briefing for meeting with ICMPD Director General, Dr. Michael SPINDELEGGER on 24 February 2020, CAB VARHELYI/135

Having examined these two documents under the provisions of Regulation (EC) No 1049/2001, I have decided that access must be refused to them, as disclosure is prevented by the exception to the right of access laid down in Article 4(3) first subparagraph (protection of the decision-making process) of Regulation (EC) No 1049/2001.

Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 provides that *'[A]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure'*.

The full disclosure of documents 1 and 2, would reveal internal opinions and internal follow up points of documents designed for internal purposes and not for external communications. This could potentially cause confusion to the public, by placing in the public domain preliminary statements of staff members of the European Commission, which do not necessarily reflect the final position of the Union.

In addition, there is a real and non-hypothetical risk of self-censorship by the European Commission services. The full public disclosure of the documents requested would undermine the protection of the decision-making process of the Commission, as it would reveal preliminary views and policy options, which are currently under consideration; the Commission's services must be free to explore all possible options in preparation of a decision free from external pressure.

Indeed, as the General Court has held, *'the possibility of expressing views independently within an institution helps to encourage internal discussions with a view to improving the*

---

<sup>(4)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, Official Journal L 145 of 31 May 2001, p. 43.

*functioning of that institution and contributing to the smooth running of the decision-making process'* <sup>(5)</sup>. In this sense, it is important for the quality of the Commission's decision-making process that documents drawn up for internal use and opinions exchanged during internal deliberations are protected, so as to ensure an adequate analysis and discussion within the Commission services.

Unfortunately, it is not possible to give more detailed reasons justifying the need for confidentiality without disclosing their content and, thereby, depriving the exception of its very purpose <sup>(6)</sup>.

### **No overriding public interest in disclosure**

The exception laid down based on Article 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your application you do not invoke any interest except your own interest which is of a private nature. For these reasons, you have not established arguments that would show the existence of an overriding public interest in disclosure at this point in time. Neither has the Commission identified such an overriding public interest, based on the elements in its possession.

For all these reasons, I do not see, in the case at hand, a public interest within the meaning of Regulation (EC) No 1049/2001, that is to say objective and general in nature and which is not indistinguishable from individual or private interests that would outweigh the public interest in protecting the decision-making process.

### **Partial Access**

We have considered whether partial access could be granted to the documents currently withheld but this was deemed impossible, as the sensitive elements are integral part to them. Please note that we cannot provide you with more detailed information on these documents without disclosing their substance, which is protected by the quoted exceptions laid down in Article 4 of Regulation (EC) No 1049/2001.

### **Means of Redress**

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

---

<sup>(5)</sup> Judgment of 15 September 2016 in case T-18/15, *Phillip Morris v Commission*, paragraph 87.

<sup>(6)</sup> Judgment of 24 May 2011 in joined cases T-109/05 and T-444/05, *NLG v Commission*, paragraph 82. Judgment of 8 February 2018 in case T-74/16, *Pagkyprios organismos ageladotrofon v Commission*, paragraph 71.

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

(e-signed)

Maciej POPOWSKI