



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INTERNATIONAL PARTNERSHIPS

The Director General

By registered letter with acknowledgment of receipt

Brussels, 4th May 2023

intpa.a.3(2023)4369763

Ms BESCHERER Kelly

Subject: Your application for access to documents – EASE 2023/0860

Dear Ms BESCHERER,

We refer to your initial request for European Commission documents that was registered on 7 February 2023 under the above-mentioned reference number EASE 2023/0860. We also refer to your e-mail of 3 March 2023 asking you to clarify the scope of your request, pursuant to article 6(2) of Regulation (EC) No 1049/2001 regarding public access to documents.

Your initial request referred to “Information on Rapid Action Groups - Surveillance and Intervention in the Sahel (GAR-SI SAHEL), EUR 41 600 000 (T05-EUTF-SAH-REG-04); In-depth Guidelines/minutes of meetings on how to carry out the activities generically indicated in the Action Documents of projects; Monitoring reports on performed activities; Minutes of the meetings of the Operational Committee, as the body responsible for reviewing and approving the actions financed by the EUTF”.

In response to our clarification request, you provided the following reply “I would be interested in the implementation of the project specifically in Senegal and Mauritania. I am interested in the implementation of the project generally, irrespective of the implementing partner, but appreciate you may not have documents on all aspects of the project.”

I consider your request to cover documents held up to the date of your initial application, i.e. 07/02/2023.

The following (categories of) documents have been identified as falling under the scope of your request:

- Decision of the Operational Committee;
- Specific Description of the Action for Senegal and Mauritania;
- Monitoring reports on performed activities;
- Implementation Reports;
- Minutes of meetings of the steering committee.

Having examined the documents requested under the provisions of Regulation (EC) No 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, based on the following considerations.

The documents that you request form part of an OLAF investigation file and thus, are covered by the exception under Article 4(2), third indent of Regulation (EC) No 1049/2001, which stipulates that the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits.

The General Court has recognised a general presumption of non-accessibility for documents in OLAF case files.¹ It considers that the disclosure to the public under Regulation (EC) No 1049/2001 of documents that fall within the scope of an OLAF investigation could fundamentally undermine the objectives of the investigative activities of OLAF, as well as the decision-making process of the Commission and OLAF, both now and in the future.

The presumption is based on the consideration that, to determine the scope of Regulation (EC) No 1049/2001, account must be taken of relevant sectoral rules², in the case at hand, Regulation (EU, Euratom) No 883/2013³ which governs OLAF's administrative activity. OLAF's legal framework, provides for the obligation of confidentiality with regard to all information gathered during investigations, which aims at safeguarding the successful conduct of an investigation in the public interest.

We have considered whether partial access could be granted to the documents requested under Article 4(6) of Regulation (EC) No 1049/2001. Partial access is not possible, however, given that the information the document contains falls entirely under the general presumption of non-accessibility of Article 4(2), third indent of Regulation (EC) No 1049/2001 in the context of inspections and audits.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. For such an interest to exist, it firstly, has to be a public interest and, secondly, it has to outweigh the interest protected by the exception to the right of access. No such interest has been indicated in your application.

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 to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

¹ See judgment of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, paragraphs 150 to 162; judgment of 26 May 2016, *IMG v Commission*, T-110/15, EU:T:2016:322, paragraphs 28 to 39; judgment of 1 September 2021, *Homoki v Commission*, T-517/19, EU:T:2021:529, paragraph 57.

² See judgment of 28 June 2012, *Agrofert Holding v Commission*, C-477/10 P, EU:C:2012:394, paragraphs 50 to 59; judgment of 29 June 2010, *Commission v Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraphs 55 ff.; judgment of 26 May 2016, *IMG v Commission*, T-110/15, cited above, paragraphs 29 to 34; judgment of 29 June 2010, *Commission v Bavarian Lager*, C-28/08, EU:C:2010:378, paragraph 40 ff.

³ OJ L 248, 18.9.2013, p. 1.

by asking for a review via your portal⁴ account (available only for initial requests submitted via the portal account),

or by mail:

European Commission

Secretariat-General

Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076

B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Koen DOENS

⁴ <https://www.ec.europa.eu/transparency/documents-request>