



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels
HOME.D.4/AE

Mr Siméon de Brouwer
E-mail:
ask+request-11608-57b60bcb@asktheeu.org

Subject: Your application for access to documents – GESTDEM 2022/4150

Dear Mr de Brouwer,

I refer to your e-mail of 18 July 2022 in which you make a request for access to documents, registered on 19 July 2022 under the above-mentioned reference number.

You request access to:

‘- Input provided by DG JUSTICE to DG HOME’s interservice consultations on the CSAM proposal and on the BIK+

- Input provided by DG CNECT to DG HOME’s interservice consultations on the CSAM proposal and on the BIK+.

- Similarly, (...) any documented input and feedback provided on these two files by:

- the Fundamental Rights Agency

- Europol.’

A list of the documents falling within the scope of your request is included in the Annex.

Having examined the identified documents under the provisions of 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, I have come to the following conclusions.

1. No documents held

Your request is specifically targeted towards the documents received by Directorate-General for Migration and Home Affairs from other Directorate-Generals or EU Agencies.

Please note that the European strategy for a Better Internet for Kids (BIK+) is under the responsibility of the Directorate-General for Communications Networks, Content and Technology (DG CNECT). Therefore, DG HOME does not hold any input to the interservice consultation on the BIK+ Strategy.

Please also note that, with regard to ‘input and feedback’ provided by the European Union Agency for Fundamental Rights (FRA), there was no official opinion issued by the FRA.

Therefore, I regret to inform you that DG HOME has not been provided with any input or feedback that would correspond to those parts of your application.

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 documents corresponding to the description given in your application are held by DG HOME, DG HOME is not in a position to fulfil your request.

2. Partial disclosure

Having examined documents 5, 6, 7 and 8 requested under the provisions of Regulation 1049/2001, I have come to the following conclusion.

I enclose a copy of document 5.

However, parts of the document 8 relate to information that does not concern input provided on the CSAM proposal. This information is therefore out of scope of the request and has been redacted from document 8.

In addition, a complete disclosure of documents 6, 7 and 8 is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, because they contain the following personal data:

- the names and contact information of Commission staff members not pertaining to the senior management.
- the names of other natural persons.

Article 9(1)(b) of the Data Protection Regulation¹ does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do neither express any particular interest to have access to these personal data, nor put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Regarding the disclosed summary records of the meetings, I wish to draw your attention to the fact that this document was drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Home Affairs and Migration. They solely reflect the author’s interpretation of the interventions made and do not set out any official position of the third party to which the document refers, which was not consulted on its content. The records do not reflect the position of the European Commission and cannot be quoted as such.

3. Refusal

Having examined documents 1 to 4 requested under the provisions of Regulation 1049/2001, I regret to inform you that your application cannot be granted, as disclosure is

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

prevented by the exception to the right of access laid down in Article 4(3), first subparagraph, of Regulation 1049/2001.

Documents 1 to 4 relate to an ongoing decision-making process, namely, the preparation of a new proposal for a regulation², which has been recently adopted, but is still subject to the EU legislative procedure. They refer to opinions of Commission's services which took place in the framework of interservice consultation, but do not reflect the final version of the proposal adopted by the Commission.

They contain sharing of information and views between officials of the European Commission on the possible options for legislation in the area of detection of child sexual abuse online. These exchanges of information and views took place in the context of activities aimed at ensuring that all Commission's services have a say in the preparation of the legislation, and that the Commission has all the necessary information to prepare the final version for adoption.

Disclosure of these documents would seriously undermine the protection of the decision-making process of the Commission, as it would reveal preliminary views and policy options that are currently under consideration. In the preparation of a legislative proposal, the Commission's services must be able to explore a wide range of preliminary options, in preparation of a decision free from external pressure. Revealing all the views that were considered in the process would undermine the carefully balanced final Commission position, which is currently under consideration in the context of the ongoing negotiations at interinstitutional level. Disclosure of such exchanges of information and views of Commission services would seriously undermine the institutions' decision-making process, as it would deter staff from making such remarks independently and without being influenced by the prospect of wide disclosure exposing the institution and services to which the civil servants belong.

Therefore, the exception laid down in Article 4(3), first subparagraph, of Regulation 1049/2001 applies to documents 1 to 4.

The exceptions laid down in Article 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the document. We observe that you have not provided any arguments to support any pressing need for the public to obtain access to the documents. I have also examined whether there could be an overriding public interest in disclosure, but we have not been able to identify such an interest, for the same reasons as above explained.

I have considered whether partial access could be granted to these documents. However, I have come to the conclusion that it is not possible to grant access to expunged version of the documents, as the remaining parts after expunging the confidential information might be meaningless or illegible.

You are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to submit a confirmatory application requesting the Commission to review this position.

² Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse, COM(2022)209 final, adopted by the European Commission on 11 May 2022.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission

Secretariat-General

Unit C.1. 'Transparency, Document Management and Access to Documents'

BERL 7/076

B-1049 Brussels, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Monique PARIAT

Enclosure: List of documents

List of documents

GESTDEM 2022/4150

DG CNECT reply to ISC/2022/02238 on the Proposal for a Regulation on preventing and combatting the sexual abuse and sexual exploitation of children, including:

1. Cover note
2. Comments in track-changes

DG JUST reply to ISC/2022/02238 on the Proposal for a Regulation on preventing and combatting the sexual abuse and sexual exploitation of children, including:

3. Cover note
4. Comments in track-changes

Input provided by Europol

5. Meeting with Europol, 4 March 2022, Ares (2022) 5469164
6. Meeting with Europol, 6 April 2022, Ares (2022) 5468814
7. Flash report – Meeting with Europol EC3 on CSA Proposal, 20 May 2022, Ares (2022) 3891550
8. Mission report – Visit Director – General, Monique Pariat, to Europol, 19 July 2022, Ares 2022) 5345233