



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

HOME.B.3/ACA

Corinne Katz-Duchowsk

***By e-mail with acknowledgement
of receipt to :***

[ask+request-12708-
b1fbdf87@asktheeu.org](mailto:ask+request-12708-b1fbdf87@asktheeu.org)

Subject: Your application for access to documents (EASE/2023/1501)

Dear Ms Katz-Duchowsk,

I refer to your request for access to European Commission documents registered on 6 March 2023 under the above-mentioned reference number.

You request access to “*any minutes, documentation, draft proposal or impact assessment creating a relationship between the ongoing plans for launching the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS) on one side and the preparations for the 2024 Summer Olympics by France on the other side*”.

I consider your request to cover documents held up to this date.

The following documents fall within the scope of your application:

- The letter concerning the launch of the Entry/Exit System (EES) sent by the Minister for the Interior and Overseas Territories and the Deputy Minister for Transport of France to Commissioners Schinas and Johansson on 26 January 2023, Ref. Ares(2023)697839 (hereafter ‘document 1’); and
- The ‘Note from the French authorities on fluidification solutions at the border in the framework of the implementation of the Entry/Exit System (EES)’, sent by the Head of the Justice and Home Affairs Service of France to Commissioner Johansson on 13 April 2023, Ref. Ares(2023)2707726 (hereafter ‘document 2’).

Since documents 1 and 2 originate from a third party, the originator of the documents has been consulted pursuant to Article 4(4) 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 (hereafter ‘Regulation (EC) No

1049/2001')¹, according to which “[a]s regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed”.

Following an examination of documents 1 and 2 under the provisions of Regulation (EC) No 1049/2001, and taking into account the position expressed by the consulted third party, I regret to inform you that your application cannot be granted, as disclosure is prevented by the exception to the right of access laid down in the second subparagraph of Article 4(3) of this Regulation, according to which “[a]ccess to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure”.

The authors of the documents have objected to the disclosure of the documents that they sent to the Commission. They have motivated their position by indicating that the requested documents refer to preliminary exchanges between the European Commission and the French authorities on proposals for the fluidification solutions at the border which, if disclosed, could negatively affect the discussion, negotiation and decision-making processes in the context of forthcoming entry into operation of the EES.

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in the disclosure of the documents. Since the documents refer to mere proposals on which no decision has been made, I have not been able to identify such an interest.

In addition, I note that Article 4(5) of the Regulation (EC) No 1049/2001 allows a Member State to request the institution not to disclose information originating from that Member State (see Judgment of the Court 18 December 2007, C-64/05, *Sweden v Commission*, EU:C:2007:802, paragraphs 43–45).

Against this background, I have come to the conclusion that the requested documents cannot be disclosed.

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:

by asking for a review via your portal² 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

(¹) OJ L 145, 31.5.2001, p. 43.

(²) <https://www.ec.europa.eu/transparency/documents-request>

B-1049 Bruxelles

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

Finally, I note that your request has been submitted outside the EASE portal. I would therefore appreciate, if you could acknowledge receipt of the present letter by sending an email to HOME-ACCESS-DOCUMENTS@ec.europa.eu.

Yours faithfully,

Monique PARIAT
Director-General