Subject: Your application for access to documents – EASE 2024/0417

Dear Ms Carta,

I refer to your request for access to European Commission documents, registered on 24 January 2024 under the above-mentioned reference number.

Please accept my apologies for the delayed response.

By means of your request, you seek access to all documents containing the Study supporting the implementation of the Facilitators Package carried out by Milieu Law & Policy Consulting in 2023 to support the Commission with the implementation of the Facilitators Package, composed of Council Directive 2002/90/EC of 28 November 2022 defining the facilitation of unauthorised entry, transit and residence (the ‘Council Framework Decision 2002/946/JHA’). In addition, you request access to all the 27 country reports linked to Milieu's study.

I. IDENTIFICATION OF RELEVANT DOCUMENTS

The following documents have been identified as falling within the scope of your application:

1. Study supporting the implementation of the Facilitators Package - Final report - Available online here (hereinafter ‘document 1’);
2. Study supporting the implementation of the Facilitators Package - Country Report for Austria - Ares(2024)4549985 (hereinafter ‘document 2’);
3. Study supporting the implementation of the Facilitators Package - Country Report for Belgium - Ares(2024)4549985 (hereinafter ‘document 3’);
4. Study supporting the implementation of the Facilitators Package - Country Report for Bulgaria - Ares(2024)4549985 (hereinafter ‘document 4’);
5. Study supporting the implementation of the Facilitators Package - Country Report for Cyprus - Ares(2024)4549985 (hereinafter ‘document 5’);
6. Study supporting the implementation of the Facilitators Package - Country Report for Czechia - Ares(2024)4549985 (hereinafter ‘document 6’);
7. Study supporting the implementation of the Facilitators Package - Country Report for Germany - Ares(2024)4549985 (hereinafter ‘document 7’);
8. Study supporting the implementation of the Facilitators Package - Country Report for Denmark - Ares(2024)4549985 (hereinafter ‘document 8’);
9. Study supporting the implementation of the Facilitators Package - Country Report for Estonia - Ares(2024)4549985 (hereinafter ‘document 9’);
10. Study supporting the implementation of the Facilitators Package - Country Report for Greece - Ares(2024)4549985 (hereinafter ‘document 10’);
11. Study supporting the implementation of the Facilitators Package - Country Report for Spain - Ares(2024)4549985 (hereinafter ‘document 11’);
12. Study supporting the implementation of the Facilitators Package - Country Report for Finland - Ares(2024)4549985 (hereinafter ‘document 12’);
13. Study supporting the implementation of the Facilitators Package - Country Report for France - Ares(2024)4549985 (hereinafter ‘document 13’);
14. Study supporting the implementation of the Facilitators Package - Country Report for Croatia - Ares(2024)4549985 (hereinafter ‘document 14’);
15. Study supporting the implementation of the Facilitators Package - Country Report for Hungary - Ares(2024)4549985 (hereinafter ‘document 15’);
16. Study supporting the implementation of the Facilitators Package - Country Report for Ireland - Ares(2024)4549985 (hereinafter ‘document 16’);
17. Study supporting the implementation of the Facilitators Package - Country Report for Italy - Ares(2024)4549985 (hereinafter ‘document 17’);
18. Study supporting the implementation of the Facilitators Package - Country Report for Lithuania - Ares(2024)4549985 (hereinafter ‘document 18’);
19. Study supporting the implementation of the Facilitators Package - Country Report for Luxembourg - Ares(2024)4549985 (hereinafter ‘document 19’);
20. Study supporting the implementation of the Facilitators Package - Country Report for Latvia - Ares(2024)4549985 (hereinafter ‘document 20’);
21. Study supporting the implementation of the Facilitators Package - Country Report for Malta - Ares(2024)4549985 (hereinafter ‘document 21’);
22. Study supporting the implementation of the Facilitators Package - Country Report for Netherlands - Ares(2024)4549985 (hereinafter ‘document 22’);
23. Study supporting the implementation of the Facilitators Package - Country Report for Poland - Ares(2024)4549985 (hereinafter ‘document 23’);
24. Study supporting the implementation of the Facilitators Package - Country Report for Portugal - Ares(2024)4549985 (hereinafter ‘document 24’);
25. Study supporting the implementation of the Facilitators Package - Country Report for Romania - Ares(2024)4549985 (hereinafter ‘document 25’);
26. Study supporting the implementation of the Facilitators Package - Country Report for Sweden - Ares(2024)4549985 (hereinafter ‘document 26’);
27. Study supporting the implementation of the Facilitators Package - Country Report for Slovenia - Ares(2024)4549985 (hereinafter ‘document 27’);
28. Study supporting the implementation of the Facilitators Package - Country Report for Slovakia - Ares(2024)4549985 (hereinafter ‘document 28’).
II. ASSESSMENT OF THE IDENTIFIED DOCUMENTS

1. Full disclosure

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 (‘Regulation (EC) 1049/2001’), I have come to the conclusion that document 1 may be fully disclosed.

Document 1 is available online under the link indicated above.

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the Commission Decision on the reuse of Commission documents. You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

2. Rejection of public disclosure

Having examined documents 2 – 28 under the provisions of Regulation (EC) No 1049/2001, I regret to inform you that access cannot be granted, as their disclosure is prevented by the exception to the right of access laid down in the first indent of Article 4(1)(a) (protection of public security) and the first subparagraph of Article 4(3) (protection of the decision-making process) of this Regulation.

Please find my detailed assessment below.

− Protection of public security

In accordance with the first indent of Article 4(1)(a) of Regulation (EC) No 1049/2001, “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards public security.”

Documents 2 – 28 contain very granular and sensitive information and data on the transposition and implementation by Member States of the legal framework relating to the facilitation of unauthorised entry, transit, and residence, as well as on practices to combat migrant smuggling.

The sensitive character of the requested documents is further highlighted by the fact that they are marked as ‘sensitive non-classified’ and subject to handling restrictions within the Commission.

Consequently, the public disclosure of documents 2 – 28 could facilitate malicious actions of criminal networks, which put the lives of migrants in danger, and risk prejudicing the operational activities of Member States in their fight against people smuggling. Consequently, I consider that disclosing these documents would undermine the protection of the public interest of public security in the meaning of the first indent of Article 4(1)(a) of Regulation (EC) No 1049/2001.

Protection of the Commission’s decision-making process

In accordance with the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001, “[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”.

Documents 2 – 28 concern the transposition and implementation of the legal framework in the Member States. Their disclosure would seriously undermine the Commission’s decision-making process in relation to the enforcement of the current legal framework.

Moreover, the Commission is currently negotiating legislation to update the Facilitators Package. Although the proposal has been already adopted by the Commission, the inter-institutional decision-making process is ongoing, and it is still at a very early stage. Putting information about the Member States’ shortcomings into the public domain at this moment in time might hamper the ongoing negotiations and risk prejudicing the decision-making process of the Commission, who – in accordance with Article 293(2) of the Treaty on the Functioning of the European Union – has the right to alter its proposal any time during the legislative process.

These documents are therefore covered by the exception laid down in the first indent of Article 4(3) of Regulation (EC) No 1049/2001, which applies unless there is an overriding public interest in disclosure of the documents. In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have also considered the possibility of granting partial access to the documents requested. However, my assessment showed that the considerations mentioned above apply to the entire content of those documents.

III. 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:

by asking for a review via your portal 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


4 https://www.ec.europa.eu/transparency/documents-request
IV. ACKNOWLEDGEMENT OF RECEIPT

Finally, I would appreciate if you could acknowledge receipt of the present letter by sending an email to HOME-ACCESS-DOCUMENTS@ec.europa.eu.

Yours sincerely,

Beate GMINDER