Subject: Your application for access to documents – EASE 2024/2784

Dear Ms Sedou,

We refer to your request for access to European Commission documents registered on 28.05.2024, under the above-mentioned reference number.

In your application you request access to the following documents:

‘– all documents related to the reviewing of EDF projects’ compliance with Union, national and international law and ethical principles, for the 101 projects funded under EDF 2021 and EDF 2022
– all documents related to the procedures that determine the compliance of EDF projects with Union, national and international law and ethical principles, for the 101 projects funded under EDF 2021 and EDF 2022.’

1. SCOPE OF YOUR APPLICATION

Your application concerns the following documents:

1. EDF Guide for applicants (Document 1)
2. Guidance Note on International Humanitarian Law, November 2021 (Document 2)
3. Guidance Note on International Humanitarian Law, November 2023 (Document 3)
4. EDF methodology (Document 4)

After having assessed the identified documents, DG DEFIS:
• Gives access to **Document 1** which is publicly available and retrievable on the website of the European Commission (1).
• Refuses access to **Documents 2-4** on the basis of **Article 4(3) second subparagraph** (protection of the closed decision-making process).

Please see below our analysis.

2. **ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

2.1. **Protection of the Institution’s closed decision-making process**

Article 4(3), second subparagraph states that ‘Access 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 General Court acknowledged that the Commission must […] be placed in a position to decide […] wholly independently, in the general interest and free from any external pressure or third-party influence […] on the policy initiatives to be proposed. […] This is all the more important in order to preserve the essence of the power of initiative conferred on the Commission by the Treaties and its capacity to assess, wholly independently, the appropriateness of a policy proposal. More specifically, it is important to protect that power of initiative from any influences exerted by public or private interests which would attempt, outside of organised consultations, to compel the Commission to adopt, amend or abandon a policy initiative and which would thus prolong or complicate the discussion taking place within that institution (2).

**Documents 2-4** represent internal documentation drawn up and used specifically for assessment of project proposals, including their compliance with international humanitarian law, laying out the international legal instruments and their relevance to the EDF programme. This sensitive information representing part of the rationale for the assessment of project proposals ought to remain protected.

The exceptions laid down in Article 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in their disclosure. We have therefore examined whether there could be an overriding public interest in disclosure but have not been able to identify such an interest. Consequently, these documents shall remain confidential.

3. **DISCLAIMER AND RE-USE OF DOCUMENTS**

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4. **MEANS OF REDRESS**

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(1) [Zip file - documentation - European Commission (europa.eu), pg.30-32](#)

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. You can submit it via your EASE portal (³) account.

by mail, to:

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

We would therefore appreciate if you could confirm receipt of the present e-mail by replying to defis-access-documents@ec.europa.eu

Yours faithfully,

Timo Pesonen
Director-General

(e-signed)

(³) https://www.ec.europa.eu/transparency/documents-request