



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INTERNATIONAL COOPERATION AND DEVELOPMENT

The Director-General

Brussels,
DEVCO/SM

By registered letter with acknowledgment of receipt

Mr Lorenzo BAGNOLI
Via Cordusio 4
20139 – Milan
ITALY

Advance copy by e-mail:
ask+request-6991-c580bea8@asktheeu.org

**Subject: Your application for access to documents – Ref GESTDEM 2019/3526
- Initial request - Documents on EUTF projects granted to Civipol**

Dear Sir,

We refer to your e-mail dated 18 June 2019, in which you make a request for access to documents, registered on 19 June 2019 under the abovementioned reference number. We also refer to our e-mail of 2 July 2019 by which the time limit for handling your request was extended by 15 working days pursuant to Article 7(3) of Regulation (EC) No 1049/2001.¹

1. SCOPE OF YOUR REQUEST

In your request, you ask for access to:

1. *“In-depth Guidelines/minutes of meetings (like this one provided to another access request
<https://www.asktheeu.org/de/request/6664/response/22116/attach/5/SC%20Minutes%20SC%20EUTF%20NOA%20LY%2006%2007%2012%202018%20Redacted.pdf.pdf>), on how to carry out the activities generically indicated in the Action Documents of projects;*
2. *Any agreement signed between the EU and the project managing partner Civipol*
3. *monitoring reports on performed activities*

¹ Official Journal L 145 of 31.5.2001, p. 43.

4. *Minutes of the meetings of the Operational Committee, as the body responsible for reviewing and approving the actions financed by the EUTF, and evaluating reports of the impact of this project on migrants' and refugees' privacy.*
5. *Any legal framework concerning data protection and data management of the projects.*
6. *Financial reports detailing the expenditure items of the 29 000 000 Euros budget so far invested in the project",*

for projects T05-EUTF-SAH-NE-06, T05-EUTF-SAH-SN-07 and T05-EUTF-SAH-ML-08, financed under the EU Trust Fund for Africa (EUTF).

We consider your request to cover documents held up to the date of your initial application, i.e. 18 June 2019.

Based on the elements of your request (i.e. the part referring to the governing and managing bodies of EUTF) and the information available on the link copied therein, we understand point (1) of your request as referring to minutes of the Operational Committee and Steering Committee meetings.

As regards point (4) of your request, concerning minutes of meetings of the Operational Committee, as the body responsible for reviewing and approving the actions financed by the EUTF, and evaluating reports of the impact of this project on migrants' and refugees' privacy, please note that to date, there has not been any meeting of the Operational Committee or evaluation reports where the impact of the projects on migrants' and refugees' privacy have been discussed. Besides, evaluation reports are requested on a case by case basis, and the three concerned actions have not yet been object of any evaluation. Therefore, for this part the Directorate-General for International Cooperation and Development (DG DEVCO) has not identified any existing document that would correspond to the description given in your application.

As regards point (6) of your application requesting financial reports "*detailed the expenditure items of the 29 000 000 Euros budget so far invested in the project*" we would like to clarify that, the following contracts have been signed with CIVIPOL, amounting a total of EUR 12,686,800:

- Service contract no. **T05-EUTF-SAH-NE-06-02** (Security component of the AJUSEN project in Niger): Budget of EUR 3,998,300;
- Service contract no. **T05-EUTF-SAH-SN-07-01** (Modernisation of Civil registries and identification in Senegal – Diagnosis phase): Budget of EUR 688,500;
- Service contract no. **T05-EUTF-SAH-ML-08-01** (Modernisation of Civil registries and identification in Mali): Budget of EUR 8,000,000.

Based on your application we have identified the documents listed in annex to this letter.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion the majority of them may be fully or partially disclosed, while access has to be fully denied for certain documents.

2.1. DOCUMENTS FULLY DISCLOSED

Full access is provided to the following documents:

- Note to the Operational Committee of 19/05/2017 for approval of the first top-up of the AJUSEN programme (Document 3).
- Operational Committee Decision of 19/11/2017 where the first top-up of the T05-EUTF-SAH-NE-06-02 project was approved (Document 4).
- Annex I - General Conditions to the service contracts (Documents 6.2, 8.2 and 12.2). The documents are annexes to the practical guide on contract procedures for European Union external action (PRAG templates) that apply to all three contracts that have been signed, only one copy is provided.
- Annex II – Terms of Reference (Documents 6.3, 8.3 and 12.3).
- Amendments made to the Workplan mentioned in Annex III on Organisation and Methodology of the Contract service no. T05-EUTF-SAH-SN-07-01 (Documents 9.2, 10.2 and 11.2).
- Annex VI of the AJUSEN project and civil registry and eIdentification in Mali – Modèle de garantie de préfinancement (Documents 6.7 and 12.7). Please, be aware that they are the PRAG templates, so a single copy is provided.
- Annex VII - Report of factual findings and terms of reference for an expenditure verification (Documents 6.8, 8.8 and 12.8). Please, be aware that they are PRAG templates that apply to all three contracts, so a single copy is provided.

You may reuse the documents requested free of charge 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.

2.2. DOCUMENTS PARTIALLY DISCLOSED

Partial disclosure refers to those documents parts which have been redacted, as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

Partial disclosure also refers to those documents parts of which have been redacted as they contain information not falling within the scope of your request. This is the case of documents under numbers 1, 2, 3.1, 3.2 and 4; the parts falling outside the scope of your application, namely, the discussions held on other projects that were presented for approval have been taken out.

The detailed reasons for partial disclosure of documents are set out below.

2.2.1. Protection of privacy and the integrity of the individual

- Minutes of the Operational Committees approving the three projects, as well as the top-ups on the AJUSEN project (Documents 1, 2, and 5) contain personal data, in particular names, functions and initials of Commission staff.
- Special Conditions of each Service contract (Documents 6.1, 7.1, 8.1, 9.1, 10.1, 11.1 and 12.1), contain personal data, in particular names, functions and signatures of the implementing partner and European Commission representatives.
- Annexes III of each Service contract on Organisation and Methodology contain personal data, in particular names and references to curriculum vitae of experts proposed by the implementing partner (Documents 6.4, 7.2, 8.4 and 12.4)
- The Narrative part of the four Progress Reports of the AJUSEN as well as the ones related to the civil registry and identification project in Mali contain personal data, in particular names of project staff members as well as other names of persons participating to follow up meetings (Documents 13.1, 13.2, 14.1, 15.1, 16.1, 17.1 and 18.1).
- Minutes of the Steering Committee regarding the AJUSEN project (Document 5), contain personal data, in particular names of the persons attending the meeting.

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is 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/EC² ('Regulation 2018/1725').

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data "means any information relating to an identified or identifiable natural person [...]". The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.³

Please note in this respect that the names, signatures, functions, and/or initials pertaining to staff members of an institution are to be considered personal data.⁴

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶.

² Official Journal L 205 of 21.11.2018, p. 39.

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

⁴ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

Pursuant to Article 9(1)(b) of Regulation 2018/1725, “personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if [t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests”.

Only if these conditions are fulfilled and if the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

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. Therefore, the Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts. As to the handwritten signatures and initials of natural persons, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

2.2.2. Protection of the public interest as regards public security

Having examined the Progress reports of the AJUSEN project (Documents 13.1, 13.2, 13.3, 14.1, 15.1 and 16.1), under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that they may be partially disclosed (Article 4(6) of Regulation 2001/1049). Some parts of the documents pertaining to the security institutions in Niger, their organisation, equipment and related analysis, have

⁵ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

⁶ Whereas this judgment specifically related to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

been redacted as their disclosure is prevented by the exception set out in article 4(1)(a), first indent of Regulation 1049/2001, which provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards public security”.

In fact, sensitive information on the organization and capabilities of the law enforcement agencies, analysis on those matters, strategies being discussed by the authorities internally, and detailed lists of equipment (available or being procured) have been blanked out.

This subject matter indisputably relates to public security. Public disclosure of such details of the proposed action would undermine the very purpose of the action, as it would allow interested parties to know in advance the action proposed to fight terrorism and organised crime, as well trafficking of human beings, arms or drugs.

Disclosure of these details would compromise future initiatives on the ground in the field of law enforcement and providing full details on the materials and equipment would make them more vulnerable to the very individuals and/or groups targeted by these initiatives. It is not possible to describe the withheld parts in more detail without jeopardising public security, which is the very interest Article 4(1)(a), first indent of Regulation (EC) No 1049/2001 aims to protect.

The General Court has confirmed that “the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest and, consequently, [...] the Courts review of the legality of the institutions’ decisions refusing access to documents on the basis of the mandatory exceptions relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers”⁷.

Public access, at this stage, would therefore undermine the very purpose of the intended action aiming to contribute to the stabilisation of the region and to improvement of the effective control of the territory. This, in turn, would undermine the public interest as regards public security in the fight against terrorism, as well as the fight against trafficking of human being, drugs and firearms. This is a real and non-hypothetical risk, as the requested documents contain details about the intended action.

We therefore conclude that the refusal of access, at this stage, to the withheld parts of documents 13.1, 13.2, 13.3, 14.1, 15.1 and 16.1 concerning security-related details of the proposed action is justified on the basis of Article 4(1)(a), first indent of Regulation (EC) No 1049/2001.

2.2.3. Protection of commercial interests, including intellectual property

Article 4(2), first indent of Regulation (EC) No 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, [...] unless there is an overriding public interest in disclosure”.

⁷ Judgement of the General Court, at the time Court of First Instance, of 25 April 2007 in case T-264/04, *WWF European Policy Programme v Council*, EU:T:2007:114, paragraph 40.

Annex III - Organisation and Methodology of each contract

The redacted parts of Annex III of the AJUSEN project implemented by Civi.Pol (Documents 6.4 and 7.2) describe in detail the methodology and know-how of the implementing partner: strategy in managing the dialogue with beneficiary authorities and other partners, method for each activity, budget broken down by volume of man days and type of expertise needed for each activity, use of budget for incidental expenditures, and internal procedures with the headquarters to provide quality assurance and supervision.

The redacted parts of Annex III of the civil registry and identification projects in Mali (Document 12.4) and Senegal (Document 8.4) refer to the specific methodology proposed by the implementing partner; information on the internal organisation and approach of the technical assistance and their method for the selection of experts; repartition of tasks and working guidelines given to senior and junior experts; particular know-how and strategy of the implementing partner; references to administrative relations with the other implementing partner; references to logistics and internal administrative procedures; references to internal meetings to prepare the strategy or to facilitate the follow up; explanations on Civi.Pol's internal follow-up and evaluation systems on the activities and on the project staff; personal and financial resources and type of expertise allocated to each activity; health and security guidelines given to the engaged experts; guidelines on project management; some specifications on the references given on previous projects already implemented by Civi.Pol

- Available Progress reports: Narrative Report (Documents 13.1, 14.1, 15.1, 16.1 and 17.1)

The redacted parts of the Progress reports related to the AJUSEN project implemented by Civi.Pol (Documents 13.1, 14.1, 15.1 and 16.1) refer to the changes in strategy and methodology in the course of the project, and describe how the implementing agency has addressed emerging issues and challenges through changes in organisation, procedures, or reallocation of budget.

The redacted parts of the Progress reports related to the civil registry and identification project in Mali (Documents 17.1 and 18.1) contain information on the internal and logistic organisation of tasks and on the performed activities; they contain references to the methodology used to prepare and to carry out the activities as well as reporting methods; approach and methodology used on the analysis of data collected or on the elaboration of studies or guidelines; mentions to supplies and services sub-contracted with third parties; details on the work relations and practices of exchange of information and documents between the project staff and local authorities;

Given the competitive value of this information, disclosure of the withheld parts of the aforementioned documents would undermine the protection of the interests of the implementing partner that submitted it, as putting this information in the public domain would affect its future competitive position⁸.

As a consequence, there is a real and non-hypothetical risk that public access to the abovementioned information would undermine the commercial interests, including intellectual property, of the implementing partner. We conclude, therefore, that the

⁸ The exception relating to commercial interests can also be applied to non-commercial entities. Judgment of 21 October 2010, *Kalliope Agapiou Joséphidès v European Commission and Education, Audiovisual and Culture Executive Agency (EACEA)*, T-439/08, ECLI:EU:T:2010:442, paragraphs 127-128.

refusal of access to the withheld parts of documents listed above is made on the basis of the exception laid down in the first indent of Article 4(2) (protection of commercial interests, including intellectual property) of Regulation (EC) No 1049/2001.

2.3. DOCUMENTS NOT DISCLOSED

We regret to inform you that your application cannot be granted for documents 6.5, 7.3, 8.5, 9.3, 12.5, 6.6, 7.4, 8.6, 9.4, 10.3, 11.3, 12.6, 8.7, 13.5, 13.7, 14.2, 15.2, 16.2, 17.2 and 18.2, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001. We have considered whether partial access could be granted to the documents requested under Article 4(6) of this Regulation, however, no meaningful partial access could be granted without undermining the interests protected under Article 4 of the Regulation.

2.3.1 Protection of privacy and the integrity of the individual

Annexes IV of each Service contract with CV of main experts requested by you contain personal data, in particular names, contact details and professional experience of each expert proposed by the implementing partner (Documents 6.5, 7.3, 8.5, 9.3, and 12.5).

For further detail on the application of this exception please refer to section 2.2.1 of this letter.

2.3.2 Protection of commercial interests, including intellectual property

Article 4(2), first indent of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, [...] unless there is an overriding public interest in disclosure'.

The following documents have not been disclosed:

- Annex V - Estimated budget of each contract (Documents 6.6, 7.4, 8.6, 9.4, 10.3, 11.3 and 12.6);
- Annex VI – Legal entity Form and Bank account Form (Document 8.7);
- Progress reports: Financial Reports (Documents 13.5, 13.7, 14.2, 15.2, 16.2, 17.2 and 18.2).

These documents contain information on the specific pricing submitted by the implementing partner as well as sensitive financial information, including details as to the financial identification of the implementing partner.

Disclosure, to the general public, of such information would undermine the protection of the relevant implementing partner's expertise and strategy and thus its commercial strength.

In addition, the General Court has stressed that 'in principle, precise information relating to the cost structure of an undertaking constitutes business secrets, the disclosure of which to third parties is likely to undermine its commercial interests'⁹.

⁹ Judgment of 30 January 2008, Terezakis v Commission, T-380/04, EU:T:2008:19, paragraph 95.

In consequence, there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the implementing partner's interests, including intellectual property. Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, we conclude that access cannot be granted to Annex IV CVs of key experts (Documents 6.5, 7.3, 8.5, 9.3 and 12.5) as doing so would constitute unauthorised disclosure of personal data. Moreover, access to all Annex III - Estimated budget (Documents 6.6, 7.4, 8.6, 9.4, 10.3, 11.3, 12.6); as well as Annex VI containing the Legal entity Form and Bank account form (Document 8.7) and Financial Reports (Documents 13.5, 13.7, 14.2, 15.2, 16.2, 17.2 and 18.2) has to be refused on the basis of the exception laid down in the first indent of Article 4(2) (protection of commercial interests, including intellectual property) of Regulation (EC) No 1049/2001.

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, we have considered the possibility of granting partial access to these documents. However, for the reasons explained above, no meaningful partial access is possible without undermining the interests described above.

2.4. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your application, you do not put forward any reasoning pointing to an overriding public interest in disclosing the documents requested. Nor have we been able to identify any public interest capable of overriding the interests protected by Article 4(2), first indent, of Regulation (EC) No 1049/2001.

We conclude, therefore, that the protection of commercial interests prevails.

Please note also that Article 4(1)(a) first indent and 4(1)(b) of Regulation (EC) No 1049/2001 have an absolute character and do not include the possibility to demonstrate the existence of an overriding public interest.

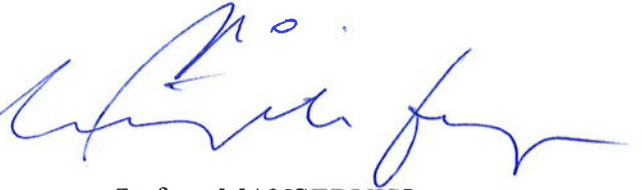
In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

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

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels

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

Yours faithfully,



Stefano MANSERVISI

Enclosures: Annex: List of documents
Documents fully or partially disclosed