



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The Director-General

Brussels,

Subject: Your application for access to documents – Ref. GestDem 2020/4311

Dear Mr Gil Martinez,

I refer to your application dated 14 July 2020¹, registered on 15 July 2020 under the above-mentioned reference number², in which you make a request for access as detailed below:

‘in relation to the implementation of the project “Recovery, Stability and socio-economic development in Libya (T05-EUTF-NOA-LY-05)”I am requesting documents which contain the following information: - In-depth Guidelines/minutes of meetings on how to carry out the activities generically indicated in the Action Fiche of project in particular those related to the partner AICS; - 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; - Any documents regarding the activities carried out by the Italian NGOs HELPCODE and CEFA (which are in charge of implementing this project on behalf of AICS)’.

I also refer to our email of 6 August 2020, by which we informed you that an extended time limit was needed for the purpose of internal consultations regarding your request³.

Your application concerns the below documents:

1. Letter from Italian Agency for Development Cooperation (AICS) to DG NEAR, 2 April 2020;

¹ Ref. Ares(2020)3741870.

² Ref. Ares(2020)3741904.

³ Ref. Ares(2020)4145624.

Mr Manuel Gil Martinez
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5G 03003 Alicante
Spain

By email only:
ask+request-7952-d3183a92@asktheeu.org

2. AICS FINAL REPORT, March 27TH 2020, FINANCIAL AND SYSTEMS AUDIT OF THE PROJECT “Recovery, Stability and Socio-Economic Development in Libya”, Delegation Agreement T05-EUTF-NOA-LY-05-01 (T05.437);
3. INCEPTION REPORT, Recovery, Stability and Socio-economic Development in Libya, Italian Cooperation Component, October 2018 - June 2019;
4. Letter from AICS to DG NEAR, 10 February 2020;
5. Letter from AICS to DG NEAR, 26 July 2019;
6. AICS management declaration, 24 January 2020;
7. Daily Flash Update N.1: 11 April 2019;
8. Provisional agenda: Steering Committee Meeting No. 2, 20th of June 2019;
9. Briefing on 2nd Steering Committee Meeting No. 2, 20th of June 2019;
10. Daily Flash Update N.2: 12 April 2019;
11. Daily Flash Update N.3: 15 April 2019;
12. Daily Flash Update N.4: 16 April 2019;
13. Daily Flash Update N.5: 17 April 2019;
14. Minutes of Steering Committee meeting No. 6, held in Tripoli, 17 June 2019;
15. “Recovery, Stability and Socio-economic Development in Libya” (T05-EUTF-NOA-LY-05) Technical Committee Meeting Summary;
16. Joint press release 2nd Steering Committee;
17. Second Submission to the Steering Committee, Endorsed in Out-of-Session Mode, 02 Mar. 2019.

Documents 16 is a publicly available document⁴.

As regards the remaining documents, having examined them under the provisions of Regulation (EC) No 1049/2001⁵ and taking into account the opinion of third parties concerned, I have decided that:

- Partial access can be granted to documents 1 and 3-6 as full disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(a), first indent (protection of the public interest as regards public security), Article 4(1)(a), third indent (protection of the public interest as regards international relations) and Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001;
- Access must be refused to documents 2, 7-15 and 17 as disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(a), first indent (protection of the public interest as regards public security), Article 4(1)(a), third indent (protection of the public interest as regards international relations) and Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001.

The justifications are as follows:

⁴ <https://www.ly.undp.org/content/libya/en/home/presscenter/pressreleases/2018/EU-Italy-UNDP-UNICEF-2nd-Steering-Committee-of-50-million-programme-with-Ministry-of-Local-Governance-to-support-basic-services-provision-across-Libya.html>.

⁵ 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, Official Journal L 145 of 31 May 2001, p. 43.

1. Protection of the public interest as regards public security

Article 4(1)(a), 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 the public interest as regards public security'.

As regards the interests protected by Article 4(1)(a) of Regulation (EC) No 1049/2001, the General Court has ruled that, 'it must be accepted that the particularly sensitive and fundamental nature of those interests, combined with the fact that access must, under that provision, be refused by the institution if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complexity and delicacy that call for the exercise of particular care. Such a decision requires, therefore, a margin of appreciation'⁶.

In this context, it is important to mention that when (partial) access is given to documents as a result of an application submitted under Regulation (EC) No 1049/2001, this access is automatically granted to the public at large, and not only to the applicant concerned. Taking into account the highly volatile and complex situation in Libya at the moment, this fact is of particular importance. The 2019 Tajoura migrant centre airstrike in Libya, which killed at least 44 migrants and injured more than 130 others is one example which shows that the risks described are not hypothetical.

Some of the documents identified, or parts thereof, contain concrete information whose disclosure would put at risk not only staff, partners and contractors but also project target groups, consisting mostly of vulnerable migrants such as unaccompanied minors, returnees and internally displaced people. Documents or part of documents to which access is refused contain information on the location of activities implemented by partners and contractors as well as the whereabouts of the reached target groups, locations of internally displaced people, host families and 'safe shelters'. Certain areas of Libya might be targeted if such information is publicly disclosed. Cross-referencing of information in the listed documents with data available via other sources creates the risk of them being targeted or attacked in a context of growing instability and violence such as the one in Libya.

Having regard to the above, I conclude that there is a reasonably foreseeable and non-hypothetical risk that disclosure of certain documents, or parts thereof, would undermine the protection of the public interest as regards public security. Therefore, I consider that the use of the exception under Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001 is justified, and that access to certain parts of the documents or to some of the documents in question must be refused on that basis.

2. Protection of the public interest as regards international relations

Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 provides that the 'institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations [...]'.

As per settled case-law, the institutions 'must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields

⁶ Judgment of the General Court of 11 July 2018, *Client Earth v European Commission*, T-644/16, paragraph 23.

covered by [the exceptions provided for in Article 4(1)(a) of Regulation 1049/2001] could undermine the public interest'⁷.

Consequently, 'the Court's review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exception [...] 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'⁸.

The full public disclosure of the documents identified as falling under the scope of the request would severely affect the international relations between the EU and the Libyan authorities, given the content of the documents which provide insight into relevant actors' involvement and decision-making on the ground and could thereby undermine the strategic planning for envisaged project activities funded by the EU. This could, in turn, further jeopardize the EU and the other partners' ability to provide support to vulnerable migrants in Libya and ultimately impede future access to final beneficiaries.

Some of the listed documents were drafted as part of a bilateral exchange between the EU and its partners or for internal purposes. Disclosing such documents, which were not designed for external communications purposes, might lead to misunderstandings and/or misrepresentations regarding the nature of the EU-funded activities in Libya. This could be broadly relayed and negatively impact established international relations with Libyan authorities, third country representatives and partner organisations, which could ultimately lead to a heightened security risk for all the stakeholders involved.

Against this background, there is a risk that full disclosure of certain documents, or parts thereof, would undermine the protection of the public interest as regards international relations. I consider this risk as reasonably foreseeable and non-hypothetical, given the sensitivity of the issue and the relevance of the above-referred information in the current context in Libya.

3. Protection of the privacy and the integrity of the individual

Complete disclosure of the documents is partly prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001. In particular, these documents contain the names, contact details and signatures of Commission staff members not pertaining to the senior management, as well as of staff members of other organisations.

Article 9(1)(b) of the Data Protection Regulation⁹ 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 not express any particular interest to have access to these personal data, nor do you

⁷ Judgment of 3 July 2014, *Council v In 't Veld*, C-350/12, paragraph 63.

⁸ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 40.

⁹ 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.

put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, 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.

Partial Access

We have considered whether partial access could be granted to the documents requested and currently withheld but this was deemed impossible as the sensitive elements are integral to them. Please note that we cannot provide you with more detailed information on these documents without disclosing their substance which is protected by the quoted exceptions laid down in Article 4 of Regulation (EC) No 1049/2001.

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

Yours sincerely,

[e-signed]

Christian Danielsson

Encl.: Documents 1 and 3-6