



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

*By registered letter with acknowledgment of receipt*

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**Subject: Your application for access to documents – GESTDEM 2021/5051**

Dear Sir,

We refer to your e-mail of 16/08/2021, in which you make a request for access to documents, registered on 17/08/2021 under the above-mentioned reference number.

You request access to

*- All available documents (final report, concept notes, summaries of the meetings, results of questionnaires etc.) concerning the Schengen evaluation of Italy in return sector. The Commission made the evaluation from 27 June to 3 July 2021 as evidenced by the site of Italian national police:*

*([https://urldefense.com/v3/https://www.poliziadistato.it/articolo/170160dc7439abf3d591091566;!!DOxrgLBm!SfLlcRKmv5vQnc5CU3yipTYbE6Uo0wuDCszeaB778lwdcLUH9S1gbZqpIQGykKX0bHOFA3JeB03HFA\\$](https://urldefense.com/v3/https://www.poliziadistato.it/articolo/170160dc7439abf3d591091566;!!DOxrgLBm!SfLlcRKmv5vQnc5CU3yipTYbE6Uo0wuDCszeaB778lwdcLUH9S1gbZqpIQGykKX0bHOFA3JeB03HFA$))*

The evaluation of Italy in the field of return is on-going. For this reason, the evaluation's final report is not ready and only the questionnaire for the preparation of the report is available.

The documents which fall within the scope of your application are therefore the following ones:

- **Document 1:** Commission implementing Decision (C(2019)6863) of 30/09/2019 establishing a standard questionnaire in accordance with Article 9 of the Council

Regulation (EU) No 1053/2013, and repealing Commission Implementing Decision C(2014) 4657.

- **Document 2:** IT answer to the questionnaire above referred to ARES (2021)5602640.

For all other documents requested, as specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request for this specific document.

As far as the document 1 is concerned, please note that it is public under the following link: [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2019\)6863&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2019)6863&lang=en).

As far as document 2 is concerned, I regret to inform you that your application cannot be granted to this document, as disclosure is prevented by exceptions to the right of access laid down in Article 4(3), first subparagraph and Article 4(1)(a) first indent of the Regulation 1049/2001.

The document which you seek to obtain contains elements to be taken into account by the Commission when preparing the evaluation report in the field of return, such as structural and operational details about the Italian return system. This document may reveal deficiencies of the national return system, discrepancies between the national legislation and the Union *acquis* or gaps between the legislative framework and national practice.

Disclosure of the document 2 would seriously undermine the protection of the decision-making process of the Commission, as it would reveal preliminary views and policy options which are currently under consideration; the Commission's services must be free to explore all possible options in preparation of a decision free from external pressure. Therefore the exception laid down in Article 4(3) first subparagraph (protection of public interest as regards the on-going decision making process) of Regulation (EC) No 1049/2001 applies to this document.

It would also reveal sensitive elements linked to the return policy of Italy and the EU. This information, if publically disclosed, could be instrumentally used to compromise the return system in the Member State concerned and it could have a negative impact on current and future relations with third countries. Therefore, the exception laid down in Article 4(1)(a) first indent (protection of public interest as regards the public security) of Regulation (EC) No 1049/2001 also applies to this document.

Finally, the evaluation report to be adopted at the end of the process will be classified EU restricted, within the meaning of [Commission Decision \(EU, Euratom\) 2015/444](#) of 13 March 2015 on the security rules for protecting EU classified information. This reinforces our assessment that the elements gathered by the Commission during the preparation of such a document are of utmost sensitivity, and that not disclosing them is essential to preserve the functioning of the Italian and EU return systems, with the consequent harm to the Union efforts in fighting against irregular migration.

We have considered whether partial access could be granted to the document 2. The sensitive parts of the document appear to be entirely covered by the exceptions for the

reasons explained above. The public elements of the document are made public to you by way of release of document 1.

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the document 2. For the reasons stated above, we have not been able to identify such an interest.

You may reuse public documents, (see document 1) 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.

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 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

(e-signed)

Monique PARIAT