



The Hague 20 December 2017

Subject: Final Reply to your Access to Documents 2017/15

Dear Ms Svobodová,

We refer to your e-mail of 25/10/2017 in which you make a request for access to documents, registered on the same day under the above mentioned reference number.

We also refer to our email of 12/12/2017 where you have been informed about the extension of the deadline.

You request access to:

“arrangements with the European External Action Service (EEAS) regarding CSDP mission EUNAVFOR Med (Operation Sophia)” and in particular " Eurojust's arrangements with the mission EUNAVFOR Med concerning the exchange of information (with respect to personal data and classified information), meetings (of experts and professionals) and assistance programmes (financing)”.

The following documents have been identified to follow within the scope of your application:

- 1. Report ref. 2016/CAU-0117/ST/FC/;**
- 2. Report of visit at EUNAVFORMED 12/13 May 2016;**
- 3. Meeting Notes ref. 2017/OPS-0577/PW/EF/CS;**
- 4. Meeting report of meeting between Eurojust and EUNAVFORMED of 01/03/2017.**

Having examined the documents requested under the provisions of Eurojust Decision to adopt rules regarding public access to Eurojusts documents of 13/07/2004, we have come to the conclusion that they could be disclosed only partially. This is due to the fact that based on their content some parts of the documents come within the remit of the exceptions of protection of the public interest as regards public security, defence and military matters and international relations (Article 4(1)(a) first, second and third indent). As a consequence, these parts have been blanked out as their disclosure is prevented by the aforementioned exceptions to the right of access to documents.



It should be noted that with respect to the exceptions under Article 4(1)(a), the General Court recognised that the EU institutions and bodies do enjoy a wide discretion for the purposes of determining whether the disclosure of the documents relating to the fields covered by the exception could undermine the public interest¹.

The EUNAVFOR MED operation Sophia is a military crisis management operation whose core mandate is to disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean and prevent further loss of life at sea. Considering the mandate of the mission, it follows that the documents subject to the request contain information which disclosure therefore would undermine the above mentioned interests of Article 4(1)(a) of the Eurojust Access to Documents Decision.

In this respect, it must be recalled that in accordance with established case law, some documents, such as reports containing sensitive defence and military information, may have sufficient features in common for their disclosure to be refused.²

We would also like to point out that the exceptions under Article 4(1)(a) are absolute in nature. This means that once Eurojust has come to the conclusion that release would indeed undermine the public interest in the fields covered by these exceptions, it has no choice but to refuse access because *“it is clear from the wording of Article 4(1)(a) [...] that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests.”*³

In other words, Eurojust is barred from taking into account other legitimate interests in order to override the conclusion that giving full access to the requested documents would harm the protected interest and grant full access nonetheless.

In addition, the requested documents contain personal data in the meaning of Article 1(h) of the Rules of Procedure on the processing and protection of personal data at Eurojust.

Pursuant to 4(1)(b) *“Eurojust shall refuse access to a documents where disclosure would undermine the protection of...the public interest as regards...the privacy and integrity of the individuals, in particular in accordance with the relevant international and European legislation regarding the protection of personal data and the Eurojust rules on data protection.”*

Article 4(1)(b) is an indivisible provision and requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data. It follows that, where an applicant seeks to obtain access to documents including personal data, the provisions of the international and European legislation in this regard, and in particular the Eurojust rules on data protection, become applicable in their entirety.⁴

¹ Case T-529/09, In 't Veld v Council, Judgment of 4 May 2012, paras 24-25, ECJ case C-266/05, Sison, para 35

² Judgment of the Court of first Instance of 7 February 2002 in case T-211/00, Kuijer v Council, para 60

³ ECJ case C-266/05, Sison, para 46

⁴ Judgment of the Court of Justice of 29 June 2010 in case - C-28/08 P, Commission v Bavarian Lager, paras 59 and 63



It is to be noted that in your application you did not put forward any reasons that would justify the necessity of having the personal data in the requested documents transferred to you. It is indeed for the person applying for access to establish the necessity of transferring that data.⁵

We draw your attention to the fact that in accordance with a settled case law the EU institutions and bodies do not have to examine *ex officio* the existence of a need for transferring personal data.⁶ If the applicant has not established a need, the institution/body does not have to examine the absence of prejudice to the person's legitimate interests.⁷

Please further note that the exception under Article 4(1)(b) is absolute in nature and therefore, not balanced by an overriding public interest in disclosure.

Therefore, all personal data in the documents have been expunged.

In accordance with Article 7(4) of the Eurojust Access to Documents Decision, you are entitled to make a confirmatory application requesting Eurojust to reconsider its position. Such a confirmatory application has to be addressed within 30 working days upon receipt of this reply to the Administrative Director of the Eurojust at the following email address:

ls-admin-external@eurojust.europa.eu

Yours sincerely,

Natalie Bergmann

Head of Legal Affairs Office

⁵ Idem, para 77 and Judgment of the Court of Justice 16 July 2015 in case C-615/13 P, ClientEarth v EFSA, para 47

⁶ Judgment of the Court of Justice of 2 October 2014 in case C-127/13, Strack v Commission, paras 106 and 107

⁷ Judgment of the General Court of 26 April 2016 in case T-221/08, Strack v Commission, paras 190-193