



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INTERNATIONAL COOPERATION AND DEVELOPMENT

The Director-General

Brussels,
DEVCO/SM

By registered letter with acknowledgment of receipt

Ms E. CASAJUANA
Radarweg 505
1043NZ Amsterdam
The Netherlands

Advance copy by email : ask+request-6490-5769b9ca@asktheeu.org

Dear Madam,

Subject: Your application for access to documents – Ref GESTDEM 2019/1240 - Initial request - EUTF Supported Project - Groupes d'Action Rapides - Surveillance et Intervention au Sahel

We refer to your e-mail dated 05/03/2019 in which you make a request under the above mentioned reference number:

You request access to the EUTF Supported Project - Groupes d'Action Rapides - Surveillance et Intervention au Sahel :

1. Any documents shared by the Manager with the Operational Committee for the purpose of - or in preparation for – approving the project T05-EUTF-SAH-REG-04 GAR-SI SAHEL (Groupes d'Action Rapides – Surveillance et Intervention au Sahel), as well as any documents amending the originals.
2. Any documents produced by the Operational Committee for the purpose of approving the project T05-EUTF-SAH-REG-04 (Groupes d'Action Rapides – Surveillance et Intervention au Sahel), including but not limited to the approval decision of the project, any agreement signed by the Operational Committee, any agreement signed between the EU and the project's implementing partners - including FIIAPP - and any minutes of the meetings of the Operational Committee.

The European Commission has identified the following documents as falling under the scope of your request:

- 1) Action document of the project, approved in June 2016 by the Operational Committee of The EU Emergency Trust Fund for Africa. Please see the website link on this project: https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/regional/gar-si-sahel-groupes-daction-rapides-surveillance-et_en
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- 2) Minutes of the Operational Committee where the GAR-SI project was approved (hereafter 'Document 1').
- 3) Delegation Agreement and annexes¹ N°T05-EUTF-SAH-REG-04-01 signed between the European Union (represented by the European Commission - EUTF) and FIIAPP on 28.12.2016 (hereafter 'Document 2')
 - Doc. 2.1. Special conditions
 - Doc. 2.2. Annex I – Description of the Action
 - Doc. 2.3. Annexe I-B Cadre logique
 - Doc. 2.4. Annex II - General Conditions PAGODA2
 - Doc. 2.5. Annex III –Estimated budget
 - Doc. 2.6. Annex IV – Financial identification fiche
 - Doc. 2.7. Annex V - Request for Payment
 - Doc. 2.8. Annex VI – Communication and visibility Plan
- 4) Amendment n°1 to the Delegation Agreement and Annex I N°T05-EUTF-SAH-REG-04-01 signed between the European Union (represented by the European Commission - EUTF) and FIIAPP on 27.02. 2018 (hereafter 'Document 3')
 - Doc. 3.1. Amendment to the Special conditions
 - Doc. 3.2. Annex I – Description of the Action
 - Doc. 3.3. Annex III –Estimated budget
- 5) Amendment n°2 to the Delegation Agreement and Annex I N°T05-EUTF-SAH-REG-04-01 signed between the European Union (represented by the European Commission - EUTF) and FIIAPP on 16.01.2019 (hereafter 'Document 4')
 - Doc. 4.1. Amendment to the Special conditions
 - Doc. 4.2. Annex I – Description of the Action
 - Doc. 4.3. Annex III –Estimated budget
- 6) Delegation Agreement and Annex I² N°T05-EUTF-SAH-REG-04-02 signed between the European Union (represented by the European Commission – EU Delegation to Burkina Faso) and FIIAPP on 25.01.2018 (hereafter 'Document 5')
 - Doc. 5.1. Special conditions
 - Doc. 5.2. Annex I – Description of the Action
 - Doc. 5.3. Annex III –Estimated budget
 - Doc. 5.4. Annex VI – Communication and visibility Plan
- 7) Delegation Agreement and annexes³ N°T05-EUTF-SAH-REG-04-03 signed between the European Union (represented by the European Commission – EU Delegation to Mali) and FIIAPP on 19.02.2018 (hereafter 'Document 6')
 - Doc. 6.1. Special conditions
 - Doc. 6.2. Annex I – Description of the Action
 - Doc. 6.3. Annex III –Estimated budget
 - Doc. 6.4. Annex VI – Communication and visibility Plan
- 8) Delegation Agreement and annexes⁴ N°T05-EUTF-SAH-REG-04-04 signed between the European Union (represented by the European Commission – EU Delegation to Niger) and FIIAPP on 26.09.2018 (hereafter 'Document 7')

¹ Annexes = Annex I. Description of the Action (including logical framework and Action Plan), Annex II. General Conditions (PAGODA2 Template applicable to the current Delegation Agreement), Annex V. Request for Payment template, Annex VI. Communication and Visibility plan.

² Only Annex I is provided as all other annexes are identical to the ones provided under document n°3

³ Only Annex I as well as the Communication and Visibility Plan are provided as all other annexes are identical to the ones provided under document n°3

Doc. 7.1. Special conditions
Doc. 7.2. Annex I – Description of the Action
Doc. 7.3. Annex III –Estimated budget
Doc. 7.4. Annex VI – Communication and visibility Plan

- 9) Delegation Agreement and annexes⁵ N°T05-EUTF-SAH-REG-04-05 signed between the European Union (represented by the European Commission – EU Delegation to Senegal) and FIIAPP on 13.07.2018 (hereafter ‘Document 8’)

Doc. 8.1. Special conditions
Doc. 8.2. Annex I – Description of the Action
Doc. 8.3. Annex III –Estimated budget
Doc. 8.4. Annex VI – Communication and visibility Plan

- 10) Delegation Agreement and annexes⁶ N°T05-EUTF-SAH-REG-04-06 signed between the European Union (represented by the European Commission – EU Delegation to Chad) and FIIAPP on 28.02.2019 (hereafter ‘Document 9’)

Doc. 9.1. Special conditions
Doc. 9.2. Annex I – Description of the Action
Doc. 9.3. Annex III –Estimated budget
Doc. 9.4. Annex VI – Communication and visibility Plan

ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing your application for access to documents submitted pursuant to Regulation 1049/2001, the European Commission would like to inform you that:

A) Documents fully disclosed

- Annex II - General Conditions PAGODA2 (Document 2.4) as well as Annex V - Request for Payment (Document 2.7). Please, be aware that they are the COMPANION templates that applies to all contracts that have been signed, 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, 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.

- Annex VI – Communication and visibility Plan (Documents 2.8, 5.4, 6.4, 7.4, 8.4 and 9.4)

Please note that these documents were received by the Commission from FIIAPP. They are disclosed for information only, and cannot be re-used without the agreement of the originator, who holds a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

B) Documents partially disclosed

I. Parts of the documents considered to fall outside of the scope of your application

⁴ Only Annex I as well as the Communication and Visibility Plan are provided as all other annexes are identical to the ones provided under document n°3

⁵ Only Annex I as well as the Communication and Visibility Plan are provided as all other annexes are identical to the ones provided under document n°3

⁶ Only Annex I as well as the Communication and Visibility Plan are provided as all other annexes are identical to the ones provided under document n°3

Partial access has been granted to the Minutes of the Operational Committee where the GAR-SI project was approved (hereafter ‘Document 1’). The parts considered to fall outside the scope of your application (namely, the discussions held on other projects that were presented for their approval) have been taken out.

II. Protection of privacy and the integrity of the individual

Minutes of the Operational Committee (Document 1) as well as the Special Conditions of each Delegation Agreement (Documents 2.1, 3.1, 4.1, 5.1, 6.1, 7.1 8.1, and 9.1) requested by you contain personal data, in particular names and signatures of the implementing partner’s representatives, names, signatures, functions and initials of Commission staff.

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/EC⁷ (‘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.⁸

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.⁹

In its judgment in Case C-28/08 P (*Bavarian Lager*)¹⁰, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable¹¹.

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’.

⁷ Official Journal L 205 of 21.11.2018, p. 39.

⁸ 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](#).

⁹ 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](#).

¹⁰ 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.

¹¹ 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.

Only if these conditions are fulfilled and 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 European 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 European 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.

Consequently, I 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.

III. Protection of the public interest as regards public security

Concerning your request of "any agreement signed between the EU and the project's implementing partners - including FIIAPP-"), having examined the all Annexes I (Description of the Action) to the contracts (Documents 2.2, 3.2, 4.2, 5.2, 6.2, 7.2, 8.2 and 9.2), under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that they may be partially disclosed (Article 4(6) of Regulation 2001/1049). Some parts of the documents have been blanked out as their disclosure is prevented by the following exception:

Article 4(1)(a), first indent of Regulation 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'.

In fact, description of the Units headquarter, the deployment zones, the detailed lists of equipment and material as well as sensitive/confidential details on the operations 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 "gendarmerie" initiatives on the ground and providing full details on the materials and equipment would make them more vulnerable and prone to hacking by the very individuals and/or groups targeted by these initiatives. It is not possible to describe the withheld parts in more detail without jeopardising the public

security, which is the very interest Article 4(1)(a), first indent of Regulation 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 powers¹²’.

Public access, at this stage, would therefore undermine the very purpose of the intended action aiming to contribute to the stabilization 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.

I therefore conclude that the refusal of access, at this stage, to the withheld parts of documents 2.2, 3.2, 4.2, 5.2, 6.2, 7.2, 8.2 and 9.2 concerning security-related details of the proposed action is justified on the basis of Article 4(1)(a), first indent of Regulation 1049/2001.

IV. Protection of commercial interests, including intellectual property

Article 4(2), first indent of Regulation 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’.

In Annex I - Description of the action of each contract (Documents 2.2, 3.2, 4.2, 5.2, 6.2, 7.2, 8.2 and 9.2), withheld parts refer to a certain methodology proposed by the implementing partner on monitoring and evaluation.

These documents contain details on the proposed methodology regarding monitoring and evaluation for the action and information on the internal organisation, particular know-how and strategy of the implementing partner.

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 position¹³.

In consequence, there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the commercial interests, including intellectual property, of the implementing partner. I conclude, therefore, that the refusal of access to the withheld parts of Documents 2.2, 3.2, 4.2, 5.2, 6.2, 7.2, 8.2 and 9.2 is made on the basis of the

¹² 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.

¹³ 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.

exception laid down in the first indent of Article 4(2) (protection of commercial interests, including intellectual property) of Regulation 1049/2001.

C) Documents not disclosed

Article 4(2), first indent of Regulation 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 III - Estimated budget of each contract (Documents 2.5, 3.3, 4.3, 5.3, 6.3, 7.3, 8.3 and 9.3)

Annex IV – Financial identification Fiche (Document 2.6)

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'¹⁴.

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. I conclude, therefore, that access to all Annex III - Estimated budget (Documents 2.5, 3.3, 4.3, 5.3, 6.3, 7.3, 8.3 and 9.3); as well as Annex IV containing the Financial identification fiche (Document 2.6) have 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 1049/2001. In accordance with Article 4(6) of Regulation 1049/2001, I 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.

D) No overriding public interest in disclosure

The exception laid down in Article 4(2) first indent of Regulation 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 I been able to identify any public interest capable of overriding the interests protected by Article 4(2), first indent, of Regulation 1049/2001.

¹⁴ Judgment of 30 January 2008, Terezakis v Commission, T-380/04, EU:T:2008:19, paragraph 95.

I 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 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
Secretary-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 faithfully,



Stefano MANSERVISI

Enclosures (25)