



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The Director-General

Brussels,

Subject: Your application for access to documents – Ref GestDem 2020/1633

Dear Mr Atak,

I refer to your application dated 20 March 2020¹, registered on the same date under the above mentioned reference number², in which you make a request for access to:

‘...documents which contain the following information:

For the period between 20 June 2016 to 25 July 2017:

- a list of all meetings, regarding the crisis in Libya and its neighbourhood (including its migration, humanitarian and Mediterranean search & rescue aspects) held by the Neighbourhood and Enlargement Negotiations with NGOs. The list should include: date, individuals attending and organisational affiliation, as well as the issues discussed;
- all minutes and other reports of these meetings;
- all correspondence, including attachments (i.e. any emails, correspondence or telephone call notes) regarding these encounters. An example would be the invitation to attend these meetings/events or any follow-up correspondence; and
- all documents prepared for the purpose of the meeting and/or exchanged during the course of the meeting. An example would be the programmes for those events, lists of attendees, or any documents NGOs might have prepared and distributed to attendees’.

¹ Ref. Ares(2020)1673227.

² Ref. Ares(2020)1673241.

Mr Erman Atak
Faculty of Arts & Social Sciences/ Department of Political Science
Postbus/ P.O. Box 616
6200 MD Maastricht
THE NETHERLANDS
Sent only by Email: ask+request-7804-26ebe515@asktheeu.org

I also refer to our subsequent email dated 15 April 2020 informing you that an extended time limit was necessary to respond to your request, for the purpose of internal consultations³.

Below you can see a list of meetings between the Commission's Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) and NGOs, regarding the crisis in Libya in the timeframe that you defined. Please note that DG NEAR does not keep record of such meetings, and therefore, this list is not exhaustive:

- Meeting with Danish Refugee Council in Tunis, 23 August 2016⁴;
- Meeting with Danish Refugee Council in Tunis, 31 August 2016;
- Meeting with Human Rights NGOs⁵ in Tunis, 6 September 2016;
- Meeting with Danish Refugee Council in Tunis, 10 October 2016;
- Meeting with Ara Pacis Initiative in Brussels, 22 November 2016;
- Meeting with International Peacebuilding Alliance (Interpeace) in Brussels, 30 November 2016;
- Meeting with Human Rights NGOs⁶ in Tunis, 2 December 2016;
- Meeting with Arab NGOs Network for Development in Brussels, 6 December 2016;
- Meeting with Médecins Sans Frontières in Brussels, 3 March 2017;
- Meeting with International Rescue Committee in Tunis, July 2017⁷;

We have identified one document in our possession relevant to your request, namely 'minutes of Libya Working Group meetings'. This document contains minutes of Libya Working Group meetings, which took place between 11 January 2016 and 2 December 2016. The meetings with Human Rights NGOs of 6 September and 2 December 2016 mentioned in the list above were part of Libya Working Group meetings in which EU was present. As such, minutes of these meetings are included in the identified document.

However, having examined this document under the provisions of Regulation (EC) No 1049/2001⁸, I have decided that access must be refused to it subject to the following justifications.

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

³ Ref. Ares(2020)2057361.

⁴ All meetings with Danish Refugee Council related to programme 'Strengthening protection and resilience of displaced populations in Libya', implemented by a consortium of NGOs led by the Danish Refugee Council.

⁵ Libyan Women's Platform for Peace, Libyan Center for Freedom of Press, International Organisation for Human Rights, Libyan Organization for Legal Aid, Libyan Group for Monitoring Human Rights Violations, Zawya Center for Human Rights, Libyan Journalists Independent Syndicate, Mercy Association for Charitable and Humanitarian work, Youth For Tawergha Organization, Jurists without Chains, Belaady Foundation for Human Rights, Defenders Network for Human Rights and Libyan Judges Association and Women Defenders Network.

⁶ Reporters Without Borders, Euro-Mediterranean Foundation of Support to Human Rights Defenders, Democracy Reporting International and the Cairo Institute For Human Rights Studies.

⁷ The meeting was related to programme 'Improving Overall Resilience of Migrants and Host Communities through Improved Access to Quality Health Services in Libya' implemented by the International Rescue Committee.

⁸ 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.

Disclosure of the document 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, the document contains the names of EU staff members not pertaining to the senior management, as well as names of staff members of other international organisations and NGOs.

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 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.

2. 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’¹⁰.

In this context, it is important to mention that when 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 July 2019 airstrike on Tajoura detention centre in Libya which killed at least 44 people and injured more than 130 others is one example which shows that the risks described are not hypothetical.

The document in question contains opinions of partners on sensitive human rights issues in Libya. Public disclosure of partners’ views might be perceived as criticism, and thus, place their safety in peril by exposing them to undue pressure and even harassment.

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.

¹⁰ Judgment of the General Court of 11 July 2018, *Client Earth v European Commission*, T-644/16, paragraph 23.

Having regard to the above, I conclude that there is a reasonably foreseeable and non-hypothetical risk that disclosure of the documents 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.

3. 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 [...]'.¹¹

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 covered by [the exceptions provided for in Article 4(1)(a) of Regulation 1049/2001] could undermine the public interest'¹¹.

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'¹².

Public disclosure of the identified document would severely affect the international relations between the EU and its international and regional partners, given the content of the document, which provides 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.

The document was drafted for internal purposes. Disclosing such document, which was not designed for external communications purposes, might lead to misunderstandings and/or misrepresentations regarding the nature of EU-funded activities in Libya. This could be broadly relayed and negatively impact established international relations with Libyan authorities as well as partner organisations.

Against this background, there is a risk that full disclosure of the documents identified as falling under the scope of the request 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.

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:

¹¹ Judgment of 3 July 2014, *Council v In 't Veld*, C-350/12, paragraph 63.

¹² Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 40.

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