



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels  
HOME/MP/

Mr Andrea Glioti

By email: [ask+request-11767-5690e018@asktheeu.org](mailto:ask+request-11767-5690e018@asktheeu.org)

**Subject: Your application for access to documents – Ref GestDem 2022/4794**

Dear Mr Glioti,

We refer to your e-mail of 24 August 2022 in which you make a request for access to documents, registered on 25 August 2022 under the above-mentioned reference, and clarified by your e-mail of 29 September 2022.

You request “*documents which contain the following information:*”

*1) All correspondence (including emails and WhatsApp messages) between the European Commission Migration and Home Affairs and the International Centre for Migration Policy Development (ICMPD) since 02/03/2016*

*2) All minutes and any other records of the following meetings between representatives of the ICMPD and the listed Commissioners, Members of their Cabinet or Director-Generals, as documented in the EU Transparency Register:*

<https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=428294520891-74>

- a) Raul Hernandez Sagrera – 16/05/2022*
- b) Ylva Johansson and Raul Hernandez Sagrera – 25/05/2021*
- c) Paraskevi Michou – 24/01/2020*
- d) Ylva Johansson and Raul Hernandez Sagrera – 23/04/2020*
- e) Paraskevi Michou – 26/04/2018*
- f) Diane Schmitt – 07/09/2016*
- g) Francesco Luciana Cabinet member of Dimitris Avramopoulos 27/07/2016.”*

## **1. ASSESSMENT AND GENERAL CONCLUSIONS**

Under **point 1)** of your request, we identified the following 18 documents as falling within the scope of your request:

- A letter addressed to the EC, for a meeting request with ICMPD Director General – March 2018, Ares(2022)5128185 (document 1);
- ICMPD input to the Targeted Consultation document towards the new EU strategy addressing trafficking in human beings – July 2020, Ares(2022)5128119 (document 2);
- ICMPD feedback to roadmap on the revision of the EU Directive 2011/36 – September 2021, Ares(2022)2140525 (document 3);
- ICMPD contribution to the public consultation on the revision of the EU Anti-Trafficking Directive – March 2022 (2 documents):
  - “ICMPD Contribution to the Public Consultation on the revision of the EU Anti-Trafficking Directive”, Ares(2022)2140525 (document 4);
  - “Feedback from: ICMPD”, Ares(2022)5128005 (document 5);
- Email exchanges on ICAT Joint Submission to the Public consultation on the Anti-Trafficking Directive – March 2022, Ares(2022)5128064 (document 6);
- Complete MPF Steering Committee minutes since 2016 (12 documents):
  - 1<sup>st</sup> Meeting: Ares(2022)4695491 (document 7),
  - 2<sup>nd</sup> Meeting: Ares(2022)4694768 (document 8),
  - 3<sup>rd</sup> Meeting: Ares(2022)4694904 (document 9),
  - 4<sup>th</sup> Meeting: Ares(2022)4694964 (document 10),
  - 5<sup>th</sup> Meeting: Ares(2022)4695064 (document 11),
  - 6<sup>th</sup> Meeting: Ares(2022)4695112 (document 12),
  - 7<sup>th</sup> Meeting: Ares(2022)4695151 (document 13),
  - 8<sup>th</sup> Meeting: Ares(2022)4695430 (document 14),
  - 9<sup>th</sup> Meeting: Ares(2022)4695255 (document 15),
  - 10<sup>th</sup> Meeting: Ares(2022)4695297 (document 16),
  - 11<sup>th</sup> Meeting: Ares(2022)4695334 (document 17),
  - 12<sup>th</sup> Meeting: Ares(2022)4695389 (document 18).

Having examined documents 1 – 18 requested under the provisions of 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, I have come to the conclusion that the requested documents should be disclosed. However, a complete disclosure of the identified documents is prevented by the exception concerning the

protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, because they contain the following personal data:

- the names and initials and contact information of Commission staff members not pertaining to the senior management;
- the names and initials and contact details of other natural persons;
- handwritten signatures of natural persons;
- other information relating to an identified or identifiable natural person.

Article 9(1)(b) of the Data Protection Regulation<sup>1</sup> 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 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.

Please note that documents originating from third parties are disclosed to you based on Regulation 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Under **point 2), items c), e), f) and g) of your application**, we regret to inform you that **the Commission does not hold any documents** that would correspond to the description given in your application.

As specified in Article 2(3) of Regulation 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 this part of your request.

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<sup>1</sup> 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.

Under **point 2), items a), b) and d)**, we have identified the following documents as falling within the scope of your application:

\* Short report: Meeting Commissioner Ylva Johansson with ICMPD Director General Dr. Michael Spindelegger, 16/05/2022, registered under Ref. Ares(2022)6327013 (document 19);

\* Flash report: Meeting Commissioner Ylva Johansson with ICMPD Director General Dr. Michael Spindelegger, 25/05/2021, registered under Ref. Ares(2022)5080168 (document 20);

\* Meeting report: Meeting Commissioner Ylva Johansson with ICMPD Director General Dr. Michael Spindelegger, 23/04/2020, registered under Ref. Ares(2022)5080168 (document 21).

Having examined the documents requested under the provisions of Regulation 1049/2001, I have come to the conclusion that document 21 can be fully disclosed and that documents 19 and 20 should be partially disclosed.

Firstly, a complete disclosure of documents 19 and 20 is prevented by the exception concerning the protection of privacy and the integrity of the individual, outlined in Article 4(1)(b) of Regulation 1049/2001 and by the exception concerning the protection of the public interest as regards international relations, outlined in Article 4(1)(a), third indent, of the Regulation.

Documents 19 and 20 contain the names and contact details of Commission officials not forming part of senior management.

Article 9(1)(b) of the Data Protection Regulation 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 application, you do not express any particular interest to have access to these personal data nor do you put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that access cannot be granted to the redacted personal data included in the documents in question.

In addition, the third indent of Article 4(1)(a) of Regulation No 1049/2001 lays out an exception based on the need to protect the public interest as regards international relations. The Regulation states that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations”.

When it comes to the interests protected by Article 4(1)(a), according to settled case law of the Court of Justice, “*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 particular, of Article 4(2), to balance the requirements connected to the protection of*

*those interests against those which stem from other interests”<sup>2</sup>. Similarly, the Court stressed that 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”<sup>3</sup>.*

*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”<sup>4</sup>.*

*Moreover, as regards the interests protected by the above-mentioned article, “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”<sup>5</sup>.*

Document 20, which is of an internal nature and contains a section on the EU-Turkey Statement, has been examined in light of the above-mentioned case law. As it contains comments regarding the EU approach and preferences in the context of sensitive negotiations related to Turkey, revealing such details would jeopardise the EU-Turkey relationship and ongoing negotiations related to migration and asylum. As such, public disclosure of the redacted parts of documents would negatively affect the Commission's effectiveness in the negotiations in a realistic and non-hypothetical way.

I conclude that there is a reasonable and concrete risk that public disclosure of the requested document is likely to harm public interest in the area of international relations. As such, access to the document must to be refused under the exception laid down in the third indent of Article 4(1)(a) of Regulation 1049/2001 (protection of the public interest as regards international relations). Therefore the relevant parts of the document in question have been redacted.

## **2. MEANS OF REDRESS**

In accordance with Article 7(2) of Regulation 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:

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<sup>2</sup> Judgment of the Court of Justice of 1 February 2007, C-266/05 P, *Sison v Council*, EU:C:2007:75, paragraph 46.

<sup>3</sup> Judgment of the Court of Justice of 3 July 2014, *Council v In’t Veld*, C-350/12, EU:C:2014:2039, paragraph 63.

<sup>4</sup> Judgment of the General Court of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, EU:T:2007:114, paragraph 40.

<sup>5</sup> Judgment of the General Court of 11 July 2018, *ClientEarth v European Commission*, T-644/16, EU:T:2018:429, paragraph 23. See also Judgment of the Court of Justice of 3 July 2014, *Council v In ’t Veld*, C-350/12, EU:C:2014:2039, paragraph 63.

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

Yours faithfully,

Monique PARIAT  
Director-General

Annexes: 21 documents