



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL FOR INTERNATIONAL PARTNERSHIP

The Director-General

Brussels, 09/03/2023

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*By email:* [ask+request-12308-08b08922@asktheeu.org](mailto:ask+request-12308-08b08922@asktheeu.org)

Dear Sir,

**Subject: Your application for access to documents – Ref GESTDEM 2022/7144 -**

We refer to your e-mail dated 09 December 2022 (and following clarification of 23 January 2023) in which you make a request for access to documents, registered on 10 December 2022 under the above-mentioned reference number and further clarification by e-mail dated 23/01/2023.

## **1. SCOPE OF YOUR REQUEST**

In your request, you ask for access to:

1. *“In-depth Guidelines/minutes of meetings on how to carry out the activities;*
2. *Any agreement signed between the EU and the project managing partner Civipol*
3. *Monitoring reports on performed activities*
4. *Minutes of the meetings of the Operational Committee, as the body responsible for reviewing and approving the actions financed by the EUTF, and evaluating reports of the impact of this project on migrants' and refugees' privacy.*
5. *Any legal framework concerning data protection and data management of the projects.*
6. *Financial reports detailing the expenditure items of the budget so far invested in the project”,*

For the project T05-EUTF-SAH-SN-07 (“Programme d'appui au renforcement du système d'information de l'état civil et à la création d'un fichier national d'identité biométrique”) implemented by Civipol in Senegal financed under the EU Trust Fund for Africa (EUTF).

We consider your request to cover documents held up to the date of your initial application, i.e. 09 December 2022.

Regarding the point (1) of your request we understand that it refers to the minutes of the Operational Committee and Steering Committee meetings.

As regards the second part of point (4) of your request, concerning “evaluating reports of the impact of this project on migrants' and refugees' privacy”, please note that to date, there has not been any evaluation reports where the impact of the projects on migrants' and refugees' privacy have been discussed. Therefore, for this part the Directorate-General for International Partnership (DG INTPA) has not identified any existing document that would correspond to the description given in your application.

As regards point (6) of your application requesting financial reports “*detailing the expenditure items of the budget so far invested in the project*” we would like to clarify that, the following contracts have been signed with CIVIPOL in Senegal, amounting a total of EUR 17 838 500.00 :

- Service contract no. **T05-EUTF-SAH-SN-07-01** (Modernisation of Civil registries and eIdentification in Senegal – Diagnosis phase) : Budget of EUR 688 500.00;
- Service contract no. **T05-EUTF-SAH-SN-07-02** (Programme d'appui au renforcement du système d'information de l'état civil et à la création d'un fichier national d'identité biométrique): Budget of EUR 17 150 000.00

Based on your application we have identified the documents listed in annex to this letter.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001**

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that some of them may be fully or partially disclosed, while access has to be fully denied for certain documents.

### **2.1. DOCUMENTS FULLY DISCLOSED**

Full access is provided to the following documents:

- Annex I - General Conditions to the service contracts (Documents 1.2).
- Annex II – Terms of Reference (Documents 1.3).
- Amendments made to the Workplan mentioned in Annex III on Organisation and Methodology of the Contract service no. T05-EUTF-SAH-SN-07-01 (Documents 2.2, 3.2 and 4.2)
- Annex VII - Report of factual findings and terms of reference for an expenditure verification (Documents 1.8).

You may reuse public documents, 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.

### **2.2. DOCUMENTS PARTIALLY DISCLOSED**

Partial disclosure refers to those documents which have been partly redacted, as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001. Partial disclosure also refers to those documents parts of which have been redacted as they contain information not falling within the scope of your request. This is the case of documents under numbers 0, 1.1, 1.4, 2.1, 3.1, 4.1, 5.1, 6.1, 7.1, 7.2, 7.3, 7.4, 7.5; the parts falling outside the scope of your application, namely, the discussions held on other projects that were presented for their approval have been taken out.

The detailed reasons for partial disclosure of documents are set out below.

### **2.2.1. Protection of privacy and the integrity of the individual**

- Special Conditions of each Service contract (Documents 1.1, 2.1, 3.1, 4.1, 5.1, 6.1, 7.1, 7.2, 7.3, 7.4, 7.5), contain personal data, in particular names, functions and signatures of the implementing partner and European Commission representatives.
- Annexes III of each Service contract on Organisation and Methodology requested by you contain personal data, in particular names and references to curriculum vitae of experts proposed by the implementing partner (Documents 1.4)
- The Minutes of the steering committee of 12.12.19 (Document 6.1) contain personal data, in particular the names of the persons attending the meeting.
- Official correspondence between the EU Delegation in Dakar and the government (Documents 7.1 to 7.5) contains personal data, in particular signatures and e-mail addresses.

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/EC<sup>1</sup> ('Regulation 2018/1725').

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 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, 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.

### **2.2.2. 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'.

The redacted parts of Annex III of the civil registry and eIdentification projects in Senegal (Document 1.4,) and the contract T05-EUTF-SAH-SN-07-02 (Document 5.1) refer to the specific

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<sup>1</sup> Official Journal L 205 of 21.11.2018, p. 39.

methodology proposed by the implementing partner; information on the internal organisation and approach of the technical assistance and their method for the selection of experts; repartition of tasks and working guidelines given to senior and junior experts; particular know-how and strategy of the implementing partner; references to administrative relations with the other implementing partner; references to logistics and internal administrative procedures; references to internal meetings to prepare the strategy or to facilitate the follow up; explanations on Civi.Pol's internal follow-up and evaluation systems on the activities and on the project staff; personal and financial resources and type of expertise allocated to each activity; health and security guidelines given to the engaged experts; guidelines on project management; some specifications on the references given on previous projects already implemented by Civi.Pol

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 position.

As a 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. We conclude, therefore, that the refusal of access to the withheld parts of documents listed above is made 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 (EC) No 1049/2001.

## **2.3. DOCUMENTS NOT DISCLOSED**

We regret to inform you that your application cannot be granted for documents 1.5, 2.3, 1.6, 2.4, 3.3, 4.3 and 1.7, 5.2, 5.5, 5.3, 5.4, 5.6, and 5.7 as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001. We have considered whether partial access could be granted to the documents requested under Article 4(6) of this Regulation. However, no meaningful partial access could be granted without undermining the interests protected under Article 4 of the Regulation.

### **2.3.1 Protection of privacy and the integrity of the individual**

Annexes IV of each Service contract with CV of main experts requested by you contain personal data, in particular names, contact details and professional experience of each expert proposed by the implementing partner (Documents 1.5, and 2.3).

For further detail on the application of this exception please refer to section 2.2.1 of this letter.

### **2.3.2 Protection of commercial interests, including intellectual property**

As per the first indent of Article 4(2) (protection of commercial interests, including intellectual property) of Regulation (EC) No 1049/2001, the following documents have not been disclosed:

- Annex V - Estimated budget of each contract (Documents 1.6, 2.4, 3.3, and 4.3);
- Annex VI – Legal entity Form and Bank account Form (Document 1.7);
- Available progress reports : Narrative Reports (Documents 5.2, and 5.5) and Financial Reports (Documents 5.3, 5.4, 5.6 and 5.7).

The redacted parts of the Progress reports implemented by Civi.Pol (Documents 5.2, 5.5) refer to the implementation of the elements in Organisation and Methodology and the changes in strategy

and methodology in the course of the project, and describe how the implementing agency has addressed emerging issues and challenges through changes in organisation, procedures, or reallocation of budget.

The Progress reports related to the civil registry and e-Identification project contain information on the internal and logistic organisation of tasks and on the performed activities; they contain references to the methodology used to prepare and to carry out the activities as well as reporting methods; approach and methodology used on the analysis of data collected or on the elaboration of studies or guidelines; mentions the supplies and services sub-contracted with third parties; details on the work relations and practices of exchange of information and documents between the project staff and local authorities.

The Estimated budget (Documents 1.6, 2.4, 3.3, and 4.3), Financial forms (Document 1.7) and Financial Reports (Documents 5.3, 5.4, 5.6 and 5.7) contain also 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'<sup>2</sup>.

In accordance with Article 4(6) of Regulation 1049/2001, we 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.

In consequence, access is refused to abovementioned documents as there is a real and non-hypothetical risk that public access undermines the implementing partner's commercial interests, including intellectual property.

## **2.4. 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 we been able to identify any public interest capable of overriding the interests protected by Article 4(2), first indent, of Regulation 1049/2001.

We 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.

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<sup>2</sup> Judgment of 30 January 2008, Terezakis v Commission, T-380/04, EU:T:2008:19, paragraph 95.

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,

Koen Doens

Enclosures: Annex: List of documents  
Documents fully or partially disclosed