

EUROPEAN EXTERNAL ACTION SERVICE



DG Resource Management
The Director-General

Brussels, 27 May 2024

Mr Antoine Hasday
by electronic mail

Subject: Your confirmatory application for access to documents
Ref: 2024/34

Dear Mr Hasday,

I would like to thank you for your e-mail of 30 April 2024, in which you make a confirmatory application, in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to documents¹.

As requested, I have examined the decision of 29 April 2024 of the EEAS service in charge of access to documents (SG.LD.ATD - Transparency), taken after the assessment of the Division holding the documents, not to grant you full or partial access to the documents listed below:

- CS003 Monthly report_1 (document 1);
- CS003 Monthly report_2 (document 2);
- CS003 Monthly report_3 (document 3);
- CS003 Monthly report_4 (document 4);
- CS003 Monthly report_5 (document 5);
- CS003 Monthly report_6 (document 6);
- CS003 Monthly report_7 (document 7);
- CS003 Monthly report_8 (document 8);
- CS003 Monthly report_9 (document 9);
- CS003 Monthly report_10 (document 10);
- CS003 Monthly report_11 (document 11);
- CS003 Monthly report_12 (document 12);

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, of 31.5.2001, p. 43, hereafter the "Regulation"), as applied by the EEAS pursuant to Article 11(1) of the Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, of 3.8.2010, p. 30).

- CS003 Monthly report_13 (document 13);
- CS003 Monthly report_14 (document 14);
- CS003 Monthly report_15 (document 15);
- CS008 Monthly report_1 (document 16);
- CS008 Monthly report_2 (document 17);
- CS008 Monthly report_3 (document 18);
- CS008 Monthly report_4 (document 19);
- CS008 Monthly report_5 (document 20);
- CS008 Monthly report_6 (document 21);
- CS008 Monthly report_7 (document 22);
- CS008 Monthly report_8 (document 23);
- CS008 Monthly report_9 (document 24);
- CS008 Monthly report_10 (document 25);
- CS008 Monthly report_11 (document 26);
- CS008 Monthly report_12 (document 27);
- Quarterly Report CS013 (document 28);
- Quarterly Report 2 CS013 (document 29);
- 30 emails exchanged between EEAS and Inspiuro between 8 November 2023 and 26 March 2024 (documents 30 to 60);
- Monitoring and triage slides – First training/analyst on boarding (document 61).

After carefully assessing the arguments put forward in your confirmatory application as well as the listed documents, I regret to inform you that I have decided not to reverse the position taken by the EEAS in its initial reply.

Indeed, as our services explained in the initial reply, any disclosure of these documents - as a whole or partially - to the general public of the above listed documents would undermine the public interest as regards public security and the international relations as per Article 4(1)(a), first and third indents, of the Regulation.

This decision was taken after a thorough analysis of the content of the documents, which is particularly sensitive as it relates to the EU efforts to fight Foreign Interference and Information Manipulation (FIMI). The analysis demonstrated that the documents to which you were not granted access contain both concrete FIMI incident alerts and attempts against the EU as well as the tools and priorities established by the EEAS in the context of the monitoring and countering of this phenomenon.

More precisely, Documents 1 to 30 are the monthly and quarterly reports for services delivered to the EEAS by the contractor. They all contain the same type of information, namely the priorities to be followed in the monitoring of FIMI. The disclosure of these documents to the general public would undermine the public interest as regards public security, as per Article 4(1)(a), first indent, of the Regulation. In fact, the release of details concerning the EU capabilities and priorities of monitoring as well as in performing analysis in the context of fighting FIMI, would reveal the strengths and the weaknesses of the EEAS and, consequently, of the EU. This information would be exploited by adverse actors to counter the EU activities and would result in concrete risks of successful FIMI activities as well as cyber-attacks against the EU, thereby undermining the public security.

Documents 30 to 60 are emails which all contain the same type of information, namely alerts of potential FIMI activity as observed by various parties and which were shared with the contractor. Any release of the content as well as the title of these documents would undermine the public interest as regards public security and international relations, as per Article 4(1)(a), first and third indents, of the Regulation. In fact, the disclosure of information concerning the FIMI incidents and attempts detected by or flagged to the EU would reveal relevant strengths and weaknesses and bring benefits to the FIMI activities pursued by adverse actors, thereby undermining the public security. Moreover, disclosing information on non-EU countries

observed and considered as potential victims or authors of relevant attacks would also undermine the EU bilateral international relations with those countries.

Document 61 contains information on the monitoring tools used by the EEAS in the context of fighting FIMI as well as general instructions to perform relevant monitoring activities. Its release to the general public would therefore undermine the public interest as regards public security as per Article 4(1)(a), first indent, of the Regulation. In fact, the document would reveal to adverse actors information that could be used to counter the EU activities against FIMI and to pursue relevant malicious FIMI activities targeting the EU activities and policies.

For all these reasons, I hereby confirm that the above-mentioned documents cannot be released to the public, neither fully nor partially. Indeed, as you have specifically asked in your confirmatory application, I considered whether partial access could be granted to the listed documents. However, I agree with the assessment taken by the EEAS in its initial reply that since the substantive parts of documents 1 to 61 are covered by the invoked exceptions, the release of the marginal and accessory information in the documents not covered by the exceptions would deprive them from any useful effect.

I understand from your confirmatory application that you are surprised of having been denied access to a high number of documents. In this regard, I wish to clarify that the obligation or faculty, as the case may be, to refuse access depends on whether a document falls within the scope of one of the exceptions of Article 4 of the Regulation, regardless of the number of documents to which access is not granted. Although I share your view regarding the importance of transparency for the sake of public interest, the protection of the public interest as regards public security and international relations must also be preserved.

In particular, the exceptions laid down in Article 4(1)(a) of the Regulation, applicable in the present case, are subject to a particular regime as compared to the other exceptions included in Article 4.

On the one hand, the Institution “must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions relating to the public interest provided for in Article 4(1)(a) of the Regulation could undermine the public interest.”²

On the other hand, once the Institution has come to the conclusion that release would indeed undermine the public interest in this area, it has no choice but to refuse access, because “it is clear from the wording of Article 4(1)(a) of the Regulation 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 particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests.”³

Therefore, while the EEAS enjoys a wide discretion in assessing the impact of the release of documents, since the exception in Article 4(1)(a), first and third indents, of the Regulation, protecting a public interest such as public security and the international relations falls under the category of absolute exceptions, the EEAS is barred from balancing these exceptions against an overriding public interests in disclosure⁴.

² Judgments of 1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 34; of 12 September 2013, *Besselink v Council*, T-331/11, EU:T:2013:419, paragraph 32; and of 3 October 2012, *Jurašinović v Council*, T-63/10, EU:T:2012:516, paragraph 32.

³ Judgments of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 40, and *Access Info Europe v Commission*, T-852/16, EU:T:2018:71, paragraph 40 and the case-law cited

⁴ See Judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 38 and cited case-law

In light of the considerations exposed above, I hereby confirm that the above-mentioned documents cannot be fully released to the public and that partial access in line with Article 4(6) of the Regulation cannot be granted as it would undermine the public interest as regards public security and international relations, as per Article 4(1)(a), first and third indent, of the Regulation.

You have the right, in accordance with Article 8 of the Regulation, to institute court proceedings against the European External Action Service before the Court of Justice of the European Union and/or make a complaint to the Ombudsman, under the conditions laid down in Articles 263 and 228 of the Treaty on the Functioning of the EU respectively.

Yours sincerely,

[e-signed]

Kristin de Peyron

