

EUROPEAN EXTERNAL ACTION SERVICE



DG Resource Management
The Director-General

Brussels, 08 July 2024
eeas.sg.ld.dir(2024)5538003

Mr Luis Miguel Hurtado Coronado
by electronic mail

Subject: Your confirmatory application for access to documents
Ref: 2024/093

Dear Mr Hurtado Coronado,

I would like to thank you for your e-mail of 17 June 2024, in which you make a confirmatory application, in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to documents.¹

As requested, I have examined the decision of 4 June 2024 of the EEAS service in charge of access to documents (SG.LD.ATD - Transparency), taken after the assessment by the division holding the document, not to grant you full or partial access to the documents identified as falling within the scope of your request, namely:

1. List of the delegation members (document 1);
2. Correspondence between the EEAS and the EU-delegation in preparation of the mission (document 2);
3. Briefing (document 3);
4. Briefing background material (document 4);
5. Draft program dated 7 Feb 2024 from EU-Delegation in Kigali (document 5);
6. EU Draft *Aide Mémoire* dated 6 May (document 6);
7. Terms of Reference EU-Rwanda Security and Defence Consultations Ares(2024)3333688 (document 7).

After carefully re-assessing these documents and the arguments put forward in your confirmatory application, I regret to inform you that I have decided to maintain that decision and not to grant you access to the requested documents, as their disclosure would undermine the public interest as regards the EU international relations, the privacy and integrity of individuals and the institution decision-making process, as per Article 4(1)(a), third indent, Article 4(1)(b) and Article 4(3), first sub-paragraph, of the Regulation.

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).

As explained in the initial reply, document 1 contains the list of participants in the dialogue on security and defence with Rwanda. As such it contains personal data, the disclosure of which would undermine the privacy and integrity of individuals, as per Article 4(1)(b) of the Regulation. Article 9(1)(b) of Regulation (EU) 2018/1725² does not allow the transmission of these personal data, except if you establish 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 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 the Regulation, access cannot be granted to the personal data contained in the requested document, 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.

Documents 2 consists of correspondence between the EU participants in the mission and the EU Delegation in Rwanda. It contains practical details on the organisation of the mission as well as information on the messages and lines to take to be conveyed to the Rwandan authorities during the mission.

Documents 3 and 4 are briefings prepared for the participants in the mission. They include background information, scene setter, the agenda of the EU-Rwanda Security and Defence consultations as well as suggested speaking points and lines to take to be used during the meeting with the Rwandan counterparts.

Document 5 contains the draft program for the visit received by the EU Delegation, the list of participants as well as the relevant contact details and addresses.

Document 6 contains a brief description of the aim of the EU-Rwanda Security and Defence consultations, the description of the agenda of these consultations, identified areas for follow-up and further exchanges. Moreover, it includes an annex consisting of the agenda for the consultations held on 20 February 2024 and the participants on EU side.

Document 7 contains the terms of reference for the EU-Rwanda security and defence consultations including their rationale, objectives and modalities.

Documents 2 to 7 therefore contain sensitive elements regarding EU positions, expectations and assessments of the relations with Rwanda. More precisely, they include internal assessments of the broad security situation and security threats, both in Rwanda and other non-EU countries, of the EU political relations with them and on ongoing multilateral discussions and negotiations with international organisations. This includes a variety of sensitive issues, such as the ongoing efforts on the implementation of the United Nations Security Council Resolution 2719, the transition of the UN Peacekeeping Mission in DRC (MONUSCO), ongoing conflict prevention and de-escalation efforts undertaken by the EU and other international actors in conflicts on the African continent and assessments of ongoing reform of the African Union. These documents also contain assessments of the strategic security situation and of ongoing CSDP missions and operations on the African continent.

Following a re-examination of the above mentioned documents, I confirm that in the case at hand the disclosure of this information to the general public would undermine the public interest as regards international relations and the institution decision making process, as per Articles 4(1)(a), third indent, and Article 4(3), first sub-paragraph, of the Regulation. In fact, as explained in the initial reply, the disclosure of assessments and opinions of the EU concerning the political

² 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. 39–98).

posture of Rwanda and other countries mentioned in the documents would be negatively perceived by such countries and therefore compromise their willingness to cooperate and share information with the EU in relation to peace, security and defence. This would concretely compromise the EU ability to support the security and defence consultations in that region, as well as to receive information needed as to be able to elaborate its external relations strategy in this context. Likewise, the disclosure of information provided in confidence by other international actors and concerning the negotiation process would affect the climate of trust and cooperation with the EU on those matters.

Furthermore, the disclosure of the above mentioned documents would unveil details about the internal proceedings and decision making processes within the institution and thereby undermine the EU ability to conduct autonomous engagement with Rwanda and other African countries in the area of peace, security and defence. Notably, since the information contained in the documents relate to matters on which the EU side is in the process of taking decisions, the disclosure of these documents would undermine the internal decision making process as it would pre-empt the EU scenarios and negotiating options to the counterparts and expose the political considerations at stake to the public debate before official decisions are taken.

As regards documents 5 and the annex of document 6, they also contain personal data of the participants, as it is the case for document 1 mentioned above. Their disclosure would therefore undermine the privacy and integrity of the individual, as per Article 4(1)(b) of the Regulation.

Although I share your opinion on the importance of transparency for the sake of public interest, the protection of public interest regarding the EU international relations, the privacy and integrity of the individual, as well as the institution decision-making process must also be preserved.

In particular, the public interest exception regarding international relations laid down in Article 4(1)(a) of the Regulation is 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.”³

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.”⁴

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), second indent, of the Regulation, protecting a public interest such as security and defence matters falls under the category of absolute exceptions, the EEAS is barred from balancing these exceptions against an overriding public interest in disclosure.⁵

³ 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.

⁴ 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

⁵ 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 explained 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 because the vast majority of the substantive part of the documents are covered by the invoked exceptions, and granting a partial access, albeit marginal, to the remaining part would entail revealing information the protection of which is covered by the exceptions relied on.⁶

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
Director-General

⁶ See Judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraphs 122 and 123.