



EUROPEAN COMMISSION  
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The acting Director-General

Brussels,

**Subject: Your application for access to documents – Ref GestDem 2021/4090**

Dear Ms Pacciardi,

I refer to your application dated 19 June 2021<sup>1</sup>, registered on 21 June 2021 following receipt of your postal address<sup>2</sup>. Your request concerns:

*“Documents in relation to the implementation of the projects "CTR - PEERS: Protection Enabling Environment and Resilience Services T05-EUTF-NOA-LY-08-03":*

- *In-depth Guidelines/minutes of meetings on how to carry out the activities generically indicated in the Action Fiches of project and in the Akvo platform.*
- *Information concerning detailed activities that are being implemented under this project by CESVI and IMC.*
- *Monitoring reports on performed activities.*
- *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.*
- *Financial reports detailing the expenditure items of the 5,000,000 EUR budget so far invested in the project.”*

I also refer to our emails of 12 June 2021<sup>3</sup> and 3 August 2021<sup>4</sup>, by which we informed you that an extended time limit was needed for the purpose of internal and external consultations regarding your request.

---

<sup>1</sup> Ref. Ares(2021)4035126.

<sup>2</sup> Ref. Ares(2021)4035640.

<sup>3</sup> Ref. Ares(2021)4514746.

<sup>4</sup> Ref. Ares(2021)4932861.

Ms Agnese Pacciardi  
Via Vittorio Giambruni 2/4  
57128 Livorno  
Italy

By email only:  
ask+request-9689-c9e7f98e@asktheeu.org

Your application concerns 44 documents, which you can find listed in Annex ‘List of documents’.

Documents 6 to 15 are publicly available documents and you can find the relevant links to them in the annexed ‘List of documents’.

As regards the remaining documents, having examined them under the provisions of Regulation (EC) No 1049/2001<sup>5</sup> and taking into account the opinion of third parties concerned, I have decided that:

- Full access can be granted to documents 39 and 40;
- Partial access can be granted to documents 3, 4, 17, 18, 20, 21, 22, 25, 28 and 29 as full disclosure is prevented by the exceptions to the right of access laid down in Article 4(2), first indent (commercial interests of a natural or legal person, including intellectual property) and Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001;
- Access must be refused to documents 1, 2, 5, 7, 16, 19, 23-27, 30-38, 41-44 as disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(a), first indent (protection of the public interest as regards public security), Article 4(1)(a), third indent (protection of the public interest as regards international relations), Article 4(2), first indent (commercial interests of a natural or legal person, including intellectual property), Article 4(1)(b) (protection of the privacy and integrity of the individual) and Article 4(3), second subparagraph (protection of the decision-making process) of Regulation (EC) No 1049/2001.

The justifications are as follows:

### **1. 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’<sup>6</sup>.

In this context, it is important to mention that when (partial) 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.

---

<sup>5</sup> 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.

<sup>6</sup> Judgment of the General Court of 11 July 2018, *Client Earth v European Commission*, T-644/16, paragraph 23.

Some of the documents identified, or parts thereof, contain concrete information whose disclosure would put at risk not only staff, partners and contractors but also project target groups, consisting mostly of vulnerable population such as detained refugees and migrants. Documents or part of documents to which access is refused contain information on the location of activities implemented by partners and contractors as well as the whereabouts of the reached target groups, locations of members and representatives of local Civil Society Organisations (CSOs) managing key community-led initiatives as part of this action. Certain areas of Libya might be targeted if such information is publicly disclosed. Cross-referencing of information in the listed documents with data available via other sources creates the risk of them being targeted or attacked in a context of growing instability such as the one in Libya.

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

## **2. 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 [...]'.

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'<sup>7</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>8</sup>.

The full public disclosure of the documents identified as falling under the scope of the request would severely affect the international relations between the EU and the Libyan authorities, given the content of the documents which provide 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. This could, in turn, further jeopardize the EU and the other partners' ability to provide support to vulnerable migrants in Libya and ultimately impede future access to final beneficiaries.

Some of the listed documents were drafted as a part of bilateral exchanges between the EU and its partners or for internal purposes. Disclosing such documents, which were not designed for external communications purposes, might lead to misunderstandings and/or misrepresentations regarding the nature of the EU-funded activities in Libya. This could be broadly relayed and negatively impact established international relations with Libyan

---

<sup>7</sup> Judgment of 3 July 2014, *Council v In 't Veld*, C-350/12, paragraph 63.

<sup>8</sup> Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 40.

authorities, third country representatives and partner organisations which could ultimately lead to a heightened security risk for all the stakeholders involved.

Against this background, there is a risk that full disclosure of certain documents, or parts thereof, 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.

### **3. Protection of the commercial interests of a natural or legal person, including intellectual property**

Article 4(2), first indent, of Regulation (EC) No 1049/2001 provides that 'the 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'.

Some of the identified documents contain sensitive commercial data belonging to third parties, which are not public, and their disclosure would undermine the integrity of financial operations of the entities they belong to. I refer in particular to bank accounts of grant beneficiaries, the full proposal and the detailed budget.

These documents reflect the specific know-how and experience belonging to the entity. That know-how was taken into account by the Commission when evaluating the applications submitted under the call for proposals, and, therefore, contributed to the attractiveness of awarding the contract to that entity. In turn, that information had a major impact on selection of the application of this specific beneficiary from among others participating in this call. The public disclosure of such information would undermine its "commercial interests", as it would give other potential applicants in future calls the possibility to copy from that application and use it to support their own application.

In this context, I would also like to bring to your attention case T-439/08, *Agapiou Josephides v Commission*<sup>9</sup>, where the General Court ruled that "methodology and expertise [...] highlighted as part of the [...] application, [...] relate to the specific know-how [...] and contribute to the uniqueness and attractiveness of applications in the more applications, following in particular a comparative review of proposed projects. Thus, particularly given the competitive environment in which [the project promoters] operate, it is necessary to consider that the information in question is confidential".

Furthermore, the General Court in its Judgement of 29 January 2013 in case T-339/10, *Cosepuri v EFSA*<sup>10</sup>, ruled that "[i]t follows from all the foregoing that EFSA did not err in considering, in essence, that there was a general presumption that access to the bids submitted by the other tenderers would, in principle, undermine the interest protected. The applicant has not put forward any evidence to justify the conclusion that, in the present case, that presumption did not apply to the documents disclosure of which was requested".

---

<sup>9</sup> Judgment of 21 October 2010 in 8, *Kalliope Agapiou Joséphidès v European Commission and Education, Audiovisual and Culture Executive Agency (EACEA)*, T-439/98.

<sup>10</sup> Judgment of 29 January 2013 in *Cosepuri Soc. Coop. pA v European Food Safety Authority (EFSA)*, Joined Cases T-339/10 and T-532/10, paragraph 101.

This case-law applies *mutatis mutandis* also in the case of grants.

The exception of Article 4(2), first indent, of Regulation (EC) No 1049/2001 has to be read in light of Article 339 of the Treaty on the Functioning of the European Union, which requires staff members of the European Union institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy.

Public access to the above-mentioned information would undermine the commercial interests of the grant beneficiaries concerned. Therefore, I conclude that access to this data should be refused.

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

Complete disclosure of the documents 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, these documents contain the names, contact details and signatures of Commission staff members not pertaining to the senior management, as well as of staff members of other organisations.

Article 9(1)(b) of the Data Protection Regulation<sup>11</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 (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.

#### **5. Protection of the decision-making process**

Article 4(3) second subparagraph of Regulation 1049/2001 provides that ‘Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure’.

Document 41 “Results and follow-up actions QRM for the 7th meeting of the Operational Committee of the Emergency Trust Fund for Africa – North of Africa Window” contains internal exchanges and follow up points between different Directorates General of the European Commission as well as with the European External Action Service. The subject-matter of the document concerns a decision-making process

---

<sup>11</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.

which was finalised, (draft of Action Document) but concerning actions on the field that are fully ongoing and can evolve and be modified depending of the circumstances (e.g. the irruption of Covid-19).

Hence, the disclosure would reveal internal opinions and internal follow up points on which were just intermediary step within the European Commission services, which are then completed with further steps not mentioned in the document. This could potentially cause confusion to the public, by placing in the public domain preliminary statements of staff members of the European Commission which do not necessarily reflect the final position of the Union.

In addition, there is a real and non-hypothetical risk of self-censorship by the European Commission services, which monitor the relations between the European Union and Libya and follow up the funding of the actions in the ground. Public access to the results and follow up actions discussed as an intermediate step before a final decision is taken, would bring a serious harm to the decision-making procedure concerned, as the staff of the services concerned would become more wary to share their views openly if they knew that their opinions on this sensitive topic would be released to the public.

Indeed, as the General Court has held, ‘the possibility of expressing views independently within an institution helps to encourage internal discussions with a view to improving the functioning of that institution and contributing to the smooth running of the decision-making process’<sup>12</sup>.

In light of the above, Document 41 should be protected in accordance with Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001.

### **Partial Access**

We have considered whether partial access could be granted to the documents requested and currently withheld but this was deemed impossible, as the sensitive elements are integral to them. Please note that we cannot provide you with more detailed information on these documents without disclosing their substance which is protected by the quoted exceptions laid down in Article 4 of Regulation (EC) No 1049/2001.

### **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 Secretariat-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 Brussels

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

---

<sup>12</sup> Judgment of 15 September 2016, *Phillip Morris v Commission*, T-18/15, paragraph 87.

Yours sincerely,

[e-signed]

Maciej Popowski

Encl.:           List of documents  
                  Documents 3, 4, 17, 18, 20, 21, 22, 25, 28, 29, 39 and 40