

# EUROPEAN EXTERNAL ACTION SERVICE



DG Resource Management  
The Director-General

Brussels, 9 March 2023  
eeas.sg.2 (2023) 1937325

Mr Philémon Mallet  
by electronic mail

**Subject: Your confirmatory application for access to documents**  
EEAS ref: 2023/010

Dear Mr Mallet,

I would like to thank you for your e-mail of 20 February 2023, in which you make a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to documents<sup>1</sup>.

As requested, I have examined the decision of 20 February 2023 of the EEAS service in charge of access to documents (SG.2 - Parliamentary Affairs) taken after the assessment of the division holding the document, not to grant you access to the document identified as falling within the scope of your request:

*- Internal read-out of the dinner (1 February 2023) hosted by the Lebanese embassy between General Abbas Ibrahim and EEAS MENA Managing Director H. Le Gal, dated 3 February 2023.*

After carefully assessing the arguments in your confirmatory application, I regret to inform you that they did not lead me to reverse the position of that service. Indeed, as our services explained in the initial reply, any disclosure of this document - as a whole or partially - would undermine the protection of the public interest as regards international relations as per Article 4(1)(a), third indent of the Regulation.

This decision is taken after a thorough analysis of the content of the document. The analysis showed that the document contains sensitive assessments, delivered by a third party, on the regional political and security situation in the Middle East and Lebanon. The disclosure of this document would undermine the EU's bilateral relations with Lebanon and the climate of mutual trust between the two parties, by placing in the public domain sensitive information related to diplomatic and security dialogues. It would also cause serious harm to the future discussions between the two parties, as their representatives would become more wary of sharing their views openly if they knew that the information exchanged on this sensitive topic would be released to the public.

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<sup>1</sup> 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").

Although I share your view regarding the importance of transparency for the sake of public interest, the protection of the public interest as regards international relations as per Article 4(1)(a), third indent of the Regulation must also be preserved. In particular, the public interest exception 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.*”<sup>2</sup>

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.*”<sup>3</sup>

Therefore, while the EEAS enjoys a wide discretion in assessing the impact of the release of the document since the exception in Article 4(1)(a) of the Regulation, protecting a public interest such as international relations, falls under the category of absolute exceptions, the EEAS is barred from balancing these exceptions against an overriding public interests in disclosure.<sup>4</sup>

For all these reasons, I hereby confirm that the above-mentioned document cannot be released to the public, neither fully nor partially. Indeed, I considered the possibility of a partial access, in accordance with Article 4(6) of the Regulation. However, since the vast majority of the substantive part of the document is covered by the invoked exception, granting a partial access, albeit marginal, to the remaining part would entail revealing information the protection of which is covered by the exception relied on, relating to the protection of the public interests as regards international relations.<sup>5</sup>

You have a right, in accordance with Article 8 of the Regulation, to institute court proceedings against the European External Action Service 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,



Gianmarco Di Vita

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<sup>2</sup> Judgments of 01/02/2007, *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.

<sup>3</sup> Judgments of 07/02/2018, *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. See Judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 38 and cited case-law.

<sup>5</sup> See Judgment of 07/02/2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraphs 122 and 123.