



Valletta Harbour, 21 May 2021
EASO/ED/2021/154

Ms Luisa Izuzquiza

Sent by email to: l.izuzquiza@fragdenstaat.de;
l.izuzquiza@fragdenstaat.de

Subject: Your application for access to EASO documents (No. 01215/01216)

Dear Ms Izuzquiza,

Reference is made to your correspondence dated 29 March 2021, in which you submitted to EASO (two) open-ended requests for access to the following categories of documents:

i) EASO's support in the development of new reception facilities in Greece (No. 01215):

- 1) All documents – including, but not limited to, reports, assessments, notes, briefings, analysis, studies, papers or non-papers, and any annexes – created or held by EASO regarding, related to, or produced as an outcome to the above-mentioned first technical mission to assess the suitability of the new reception facilities;
- 2) All correspondence – including, but not limited to, letters, e-mails, and any attachments – sent or received by EASO representatives regarding, related to, or mentioning the above-mentioned first technical mission to assess the suitability of the new reception facilities;
- 3) All documents – including, but not limited to, reports, assessments notes, briefings, analysis, studies, papers or non-papers, status updates, and any annexes – created or held by EASO regarding, related to, or mentioning the above-mentioned support EASO is delivering with regards to site planning, conditions in the temporary site, and design of the new site;
- 4) All correspondence – including, but not limited to, letters, e-mails, and any attachments – sent or received by EASO representatives regarding, related to, or mentioning the above-mentioned support EASO is delivering with regards to site planning, conditions in the temporary site, and design of the new site;

and

ii) EASO's involvement in the development and implementation of Joint Pilot for the establishment of a new Multi-Purpose Reception Centre in Lesvos (MPRIC) (No. 01216):

- 5) All studies, reports, evaluations, and assessments of any kind conducted by the EASO for the development and construction of the new MPRIC, i.e.: for the “Design and planning services for the new MPRIC and technical teams to support creation according to EU standards and EU best practice model (architects, etc.), including based on lessons learned via the previous Safety and Security Working Group (SSWG)”;
- 6) All documentation (including - but not limited to – reports, notes from field visits, legal basis, legal analysis or guidelines) used by the EASO in order or as a basis to produce the aforementioned studies;
- 7) All documents regarding the “monitoring mechanism” for the “handling of asylum cases at second instance”. This may include, but not limited to:
 - any reports, evaluations, guidelines, recommendations, and any draft produced to date for this purpose; and all documentation (including - but not limited to – reports, notes from field visits, legal basis, legal analysis or guidelines) used by the EASO in order or as a basis to create the aforementioned mechanism;
- 8) For any and all meetings held or attended by the EASO to discuss or regarding the Greek MPRIC:
 - all agendas for each of these meetings;
 - any record of the aforementioned meetings. This may include, but not necessarily limited to, minutes of the meetings, verbatim reports of the meetings, transcripts etc, that would provide a record of the proceedings of the meetings; and
 - all documents prepared or received by the EASO for the purpose of these meetings and/or distributed among the attendees before or during the course of these meetings (such as – but not limited to – handouts, leaflets, briefings or background notes).

Please be informed that your requests (No. 01215 and 01216) have been treated as an application for public access to documents falling under the provisions of Regulation (EC) No 1049/2001¹, in accordance with Management Board Decision No 6 of 20 September 2011².

I. PRELIMINARY REMARKS

In the Agency's view, the two afore-mentioned requests are inherently and strongly interlinked. In particular, these overlap to a great extent in terms of the relevant documents identified. As a result thereof, the Agency considers that these 'two' requests - objectively - rather entail one single overarching application for public access to documents.

¹ 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, (OJ L 145, 31.5.2001, p. 43).

² Management Board Decision No 6 of 20 September 2011 laying down practical arrangements to the documents of the European Asylum Support Office (EASO).

Therefore, having carefully examined your request and after having consulted the relevant internal and external entities, please find below the Agency's combined response concerning all of the above-quoted document-categories under joint reference number 01215/01216.

II. RELEVANT DOCUMENTS IDENTIFIED

After a particularly thorough and extensive exercise involving the engagement of multiple internal entities, the Agency identified the following (categories of) documents falling under the scope of your present request:

Category 1: Experts' reports (multiple/different versions of experts opinions and reports on new reception facilities in Greece, relating to technical reviews and opinions, including site plans and blueprints of different locations);

Category 2: Report and opinion documents shared with the European Commission regarding the Grant Application submitted by the Greek Authorities;

Category 3: Extensive internal and external email communication relating to new reception facilities in Greece (including with the European Commission and experts);

Category 4: The Grant Application and Grant Agreement concluded between the European Commission and the Greek Ministry of Migration and Asylum;

Category 5: EASO Reception Guidance and Reception Conditions Directive;

Category 6: Minutes/Agendas of the Migration Management Steering Committee, co-chaired by European Commission and Greek authorities;

Category 7: Briefing note for EASO's Executive Director in preparation of a videoconference with the European Commission and Greek Ministry for Migration and Asylum;

Category 8: Letter of EU Directorate General for Migration and Home Affairs to Greek Ministry for Migration and Asylum.

III. EXCEPTIONS UNDER ARTICLE 4 OF REGULATION (EC) NO 1049/2001

EASO is highly committed to the principle of transparency and the rights of individuals to access documents of EU institutions, bodies and agencies as laid down in both Article 15 of the TFEU and Article 42 of the Charter of Fundamental Rights of the EU.

However, multiple exceptions under Article 4 of Regulation (EC) No 1049/2001 still need to be applied in the present case warranting the non- or (only) partial disclosure of various documents, relating to:

- a) The protection of commercial interests;
- b) The protection of the decision-making process;
- c) The protection of personal data; and
- d) The protection of public security.

The various sub-paragraphs below set out the Agency's precise reasoning thereon, which is the result of significant and substantial administrative efforts from the side of EASO - in accordance with the principle of good administration:

Ad a) EASO's assessment in relation to the protection of commercial interests

Article 4(2), first indent of Regulation (EC) No 1049/2001 provides that the institution shall refuse access to a document where the 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. All of the documents identified under categories **1, 2, 3, 4, 5, 7** and **8** are drawn up in the context of a grant application and subsequently concluded grant agreement which reflect information on methodologies, know-how, specific pricing and other information that carry a commercial value. After a concrete individual assessment, the Agency deems that the disclosure of such documents containing information relating to the execution of a service or of an action would undermine the protection of the relevant natural or legal persons' (i.e. the Greek Ministry for Migration and Asylum, as well as the European Commission) expertise, strategy and creativity and thus their commercial strength.

Although the Grant Agreement between the Greek Ministry for Migration and Asylum and European Commission has been signed in the meantime, the implementation thereof will include different sub-processes and public tenders, which, if disclosed at this stage would affect the commercial interests and commercial strategies of various legal persons, including on intellectual property.

Ad b): EASO's assessment in relation to the protection of decision-making process

Article 4(3), first subparagraph of Regulation (EC) No 1049/2001 provides that: "[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure". Moreover, the second subparagraph of the same Article provides that: "[a]ccess 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".

The documents identified by the Agency under Categories **1, 2, 3, 4, 5, 7** and **8** relate to technical reviews and opinions, site plans of different locations for the development of new reception facilities in Greece, drafted by experts in order to provide (technical) advice and support in deliberations between relevant stakeholders. These categories documents were drawn up at the stage of ongoing deliberations between stakeholders in the context of the preparation and evaluation of a grant application, as well as the conclusion of a subsequent grant agreement. Notwithstanding that the Grant Agreement between the Greek authorities and European Commission has been signed in the meantime, the disclosure of those (preparatory) documents would still have a serious negative impact on the independence and decision-making of the panel members involved in the evaluation of the grant application (from the European Commission), as this would allow persons who were not part of that panel, to exert ex-post external interference and pressure.

Moreover, the same documents are part of the ongoing process of developing new reception facilities in Greece, where the final decisions on all of the definitive (follow-up) modalities have not yet been taken. For instance, different sub-processes and procedures still need to be decided upon under the Memorandum of Understanding between the European Commission, the European Asylum Support

Office, the European Border and Coast Guard Agency, Europol and the Fundamental Rights Agency, one the one part, and the Government of the Hellenic Republic, on the other part, on a Joint Pilot for the establishment and operation of a new Multi-Purpose Reception and Identification Centre on Lesbos³. That memorandum provides that the objective of the joint pilot is to channel the necessary support to the Greek authorities for completing and operating, by early September 2021, an up-to-standard fully functioning new MPRIC on Lesbos with a capacity of 5 000 people.

In EASO's assessment, the disclosure of the above-mentioned documents would seriously undermine the decision-making processes of both: (i) the European Commission - in evaluating the Grant Application and concluding a subsequent Grant Agreement, as well as (ii) the Greek ministry for Migration and Asylum - in terms of deciding on all of the further modalities in the ongoing process of developing new reception facilities in Greece. Therefore, access must be refused as per Article 4(3)b of Regulation (EC) No 1049/2001.

Ad c): EASO's assessment in relation to the protection of personal data

The Agency further has to take into consideration the applicable personal data protection legislation and case law. Pursuant to Article 3(1) of Regulation 2018/1725⁴, 'personal data' means: "*any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person*". Article 4(1)(b) of Regulation (EC) No 1049/2001 stipulates that the institutions shall refuse access to a document where its disclosure would undermine the protection of privacy and integrity of individuals, in particular in accordance with Community legislation regarding the protection of personal data. Article 4(6) of Regulation (EC) No 1049/2001 stipulates that if only parts of the requested documents are covered by any of the exceptions, the remaining parts of the documents should be released.

The documents under Categories **1, 2, 3, 4, 6, 7** and **8** contain personal data from the side of EASO, the European Commission, the relevant Greek authorities, as well as other stakeholders. In EASO's assessment, the disclosure thereof would seriously undermine the protection of the personal data of the natural persons whose names and/or other personal data are mentioned therein, in breach of the provisions of Regulation (EU) 2018/1725. Therefore, access must be refused as per Article 4(1)(b) of Regulation (EC) No 1049/2001.

Ad d) EASO's assessment in relation to the protection of public security

In accordance with Article 4(1)(a) first indent, access to a document **must** be refused if its disclosure would undermine the protection of public security. The documents under Categories **1, 2** and **4** contain detailed information and descriptions of the site plans and blueprints of different locations including details on security parameters of (planned) reception facilities in Greece. These documents also relate to plans for allocation of different groups of migrants and equipment/assets inside of planned reception facilities, thus also providing insights into the modus operandi of the operational activities of the responsible authorities present. In EASO's assessment, the disclosure of such information would: (i) seriously impair the effectiveness of the operations of the responsible authorities and (ii)

³ https://ec.europa.eu/home-affairs/sites/default/files/pdf/03122020_memorandum_of_understanding_en.pdf

⁴ 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).

entails a clear and definite danger to the health and safety of migrants and any other persons present within those reception facilities. Therefore, access must be refused as per Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

IV. PARTIAL ACCESS

Based on the principle of proportionality⁵, the Agency examined whether partial access could be granted to all of the documents covered by Categories 1) to 8). However, the relevant case law provides that there is no obligation to grant partial access in case the remaining parts of the documents would be meaningless and/or the administrative burden of blanking out the parts covered by exceptions would be excessive⁶.

In order to provide partial access in this instance, the Agency would need to individually process (i.e. examine and insert manual redactions in) dozens of documents totalling a huge amount of combined pages. Moreover, the complex and technical nature of those documents makes it a particularly difficult exercise to comprehensively assess which precise parts of each individual document should be covered by which precise exception(s). Such an exercise would clearly entail a vastly disproportional administrative burden for EASO. As such, the Agency does not consider it reasonably required to grant partial access in this case, in line with the relevant case law.

The Agency has however - under Category 6 - identified five documents which were relatively straightforward to redact, while still providing useful insights and information regarding the subject at hand. These documents concern the minutes of the Migration Management Steering Committee Meetings, originating from the European Commission. Pursuant to Article 4(4) of Regulation (EC) No 1049/2001, as regards third-party documents, the Agency shall consult the third party concerned with a view to assessing whether an exception in paragraph 1 or 2 of the above-mentioned Article is applicable, unless it is clear that the document shall or shall not be disclosed. In accordance with the above-mentioned Article, the Agency consulted the European Commission on the disclosure of these five documents, as well as the relevant Greek authorities.

Pursuant to the Agency's own assessment under Regulation (EC) No 1049/2001, please be informed that EASO has decided to disclose the afore-mentioned minutes of the Migration Management Steering Committee Meetings (entailing five separate documents). However, certain parts thereof still had to be redacted in light of the exceptions provided under Article 4(1)(b) of Regulation (EC) No 1049/2001. Otherwise, this would have undermined the protection of the privacy and integrity of the individual in particular in accordance with Community legislation regarding the protection of personal data. As such, redactions have been made in light of the protection of personal data, in accordance with Article 4(1)(b) of Regulation (EC) No 1049/2001. Furthermore, certain parts of these minutes had to be redacted in light of the exception provided under Article 4(1)(a), first indent. The redacted parts of the minutes relate to detailed information and descriptions of the equipments/assets inside of reception facilities, thus also providing insights into the modus operandi of the operational activities of the responsible authorities present. The redacted parts also relate to specific information on the asylum procedures. In EASO's assessment, the disclosure of such information would: (i) seriously impair the effectiveness of the operations of the responsible authorities and (ii) entails a clear and definite danger

⁵ *Case T-14/98, Hautala v Council.*

⁶ *Judgment of the Court of first Instance of 7 February 2002 in case T-211/00, Kuijter v Council, & Judgment of the General Court of 20 March 2014 in case T-181/10, Reagens v Commission.*

to the health and safety of migrants and any other persons present within those reception facilities. As such, certain redactions have been made as per Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

I am pleased to inform you that you may find these five documents attached to this present letter.

Moreover, as regards the documents under Category 5, kindly note that the [EASO Guidance on Reception Conditions](#) and [Reception Conditions Directive](#) are already publicly available.

Overriding public interest

With regard to the protection of: (i) commercial interests and (ii) the decision-making process, the Agency further examined whether an overriding public interest exists in the disclosure of all of the identified documents. In this sense, it has concluded there is no such an overriding public interest. Namely, the disclosure of the documents carrying a significant commercial value and/or relating to procedures where all follow-up decisions are yet to have been taken - and where their disclosure would undermine the protection of public security - clearly does not constitute an overriding public interest. In this sense, it should also be taken into consideration that EASO already provides a proper level of transparency by agreeing to disclose the minutes of the afore-mentioned Steering Committee.

In light of the above considerations, access to the documents identified under Categories **1, 2, 3, 4, 7 and 8** of your request must be refused on the basis of Article 4(1)(a), first indent; Article 4(1)(b); Article 4(2), first indent and Article 4(3), first paragraph of Regulation (EC) No 1049/2001.

V. Conclusion

The Agency is committed to upholding the principles of transparency and good administration. Please be assured that my services have tried their utmost in terms of accomodating your present (very) open-ended application for a wide variety of categories of documents, which entailed significant and substantial administrative efforts.

As such, I trust the enclosed documents will prove useful and thank you for your interest in EASO. As regards the non-disclosure of other documents, please note that the Agency is not in a position to disclose (operational) information which, if made public, would jeopardise the protection of public security, commercial interests, personal data, as well as the decision-making process.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, within 15 working days of the receipt of this letter, you may submit a confirmatory application to EASO asking it to reconsider its position. Pursuant to Article 8 of Regulation (EC) No 1049/2001, EASO will reply to you within 15 working days from registration of such an application.

Please note however that you are only entitled to submit a single confirmatory application to the present combined response letter, with regard to (joint) request No. 01215/01216. The Agency will not process two confirmatory applications submitted in a separable manner.


You can submit a confirmatory application via the following methods:

By post:

The Executive Director
European Asylum Support Office (EASO)
MTC Block A
Winemakers Wharf
Grand Harbour Valletta, MRS 1917
Malta

By electronic mail: exo.mailbox@easo.europa.eu

Yours sincerely,



Nina Gregori
Executive Director

Enclosures:

- *1st Migration Management Steering Committee Meeting Minutes (15 October 2020), redacted*
- *2nd Migration Management Steering Committee Meeting Minutes (12 November 2020), redacted*
- *3rd Migration Management Steering Committee Meeting Minutes (17 December 2020), redacted*
- *4th Migration Management Steering Committee Meeting Minutes (20 January 2021), redacted*
- *5th Migration Management Steering Committee Meeting Minutes (25 February 2021), redacted*