



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels, 25 May 2022  
HOME.E.2.001/PS

***By registered letter with acknowledgment  
of receipt***

Ms Luisa Izuzquiza  
FragDenStaat c/o Open Knowledge  
Foundation  
Singerstr. 109  
10179 Berlin  
[REDACTED]

***Advance copy by email:***  
[REDACTED]

**Subject: Your application for access to documents- GESTDEM 2022/1824**

Dear Ms Izuzquiza,

We refer to your email dated 28 March 2022 in which you make a request for access to documents, registered on 29 March 2022 under the abovementioned number.

You request access to

- i) all technical progress reports for project number HOME/2020/AMIF/AG/EMAS/0127 from 1 September 2020 to date, including all annexes;
- ii) the Certificate on the Financial Statements and Underlying Accounts ('Audit Certificate') for agreement number HOME/2020/AMIF/AG/EMAS/0127, including all annexes;
- iii) and the Final Technical Implementation Report for project number HOME/2020/AMIF/AG/EMAS/0127, including all annexes.'

The following documents fall within the scope of your application<sup>1</sup>:

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<sup>1</sup> The identification of the documents that fall under the scope of this Access to Document application, was made based on the reporting obligations, set in the latest third amendment of the Grant Agreement, signed on 17 February 2022 (Ares(2022)1358340).

## **Progress Reports**

- First Progress report on the implementation of the action covering the period from 1 September 2020 until 30 November 2020, with reference number Ares(2021)838162 – 01/02/2021 (hereinafter Document 1)
- Second Progress report on the implementation of the action covering the period from 1 December 2020 until 28 February 2021, with reference number Ares(2021)3036787 – 06/05/2021 (hereinafter Document 2), which includes the following annexes:
  - o A statement on the amount of the previous pre-financing instalment used to cover costs of the action ('statement on the use of the previous pre-financing instalment') (hereinafter Document 2.1)
  - o Appendix 'Site Photos' (hereinafter Document 2.2)
- Third Progress report on the implementation of the action covering the period from 1 May 2021 until 30 June 2021, dated 2 August 2021, with reference number Ares(2021)4933628 – 03/08/2021 (hereinafter Document 3), which includes the following annex:
  - o Appendix 'Site Photos' (hereinafter Document 3.1)
- Fourth Progress report on the implementation of the action covering the period from 1 September 2021 until 31 October 2021, dated 30 November 2021, with reference number Ares(2021)7375465 – 30/11/2021 (hereinafter Document 4), which includes the following annex:
  - o Appendix 'Site Photos' (hereinafter Document 4.1)

## **Interim Technical Reports**

- First Interim Technical Report, covering the period from 1 September 2020 until 30 April 2021, with reference number Ares(2021)4384066 – 06/07/2021 (hereinafter Document 5), which includes the following annexes:
  - o Appendix 'Site Photos' (hereinafter Document 5.1)
  - o Interim Financial Statement in pdf format signed by the legal representative (hereinafter Document 5.2)
  - o Interim Financial Statement in excel format (hereinafter Document 5.3)
  - o Certificate on the Financial Statements and Underlying Accounts ('Audit Certificate') (hereinafter Document 5.4)
- Second Interim Technical Report covering the period from 1 May 2021 until 31 August 2021, with reference number Ares(2021)6603728 – 26/10/2021 (hereinafter Document 6), which includes the following annexes:
  - o Appendix 'Site Photos' (hereinafter Document 6.1)
  - o Interim Financial Statement in pdf format signed by the legal representative (hereinafter Document 6.2)
  - o Interim Financial Statement in excel format (hereinafter Document 6.3)

- Certificate on the Financial Statements and Underlying Accounts ('Audit Certificate') (hereinafter Document 6.4)
- Third Interim Technical Report covering the period from 1 September 2021 until 31 December 2021, with reference number Ares(2022)2369353 – 30/03/2022 (hereinafter Document 7), which includes the following annexes:
  - Interim Financial Statement in pdf format signed by the legal representative (hereinafter Document 7.1)
  - Interim Financial Statement in excel format (hereinafter Document 7.2)
  - Certificate on the Financial Statements and Underlying Accounts ('Audit Certificate') (hereinafter Document 7.3)

In relation to the points ii) and iii) of your request, I regret to inform you that at this stage the Commission does not hold any documents that would correspond to the description given in your application.

Article I.4.4 of the Grant Agreement, foresees that the beneficiary must submit a final report of the action as well as a certificate on the financial statements and underlying accounts ('certificate on the financial statements'), within 90 days following the end of the last reporting period (end date of the implementation of the project). As the current end date of the Grant Agreement is 31 December 2022<sup>2</sup>, the documents in reference have not yet been submitted to the Commission.

In relation to the point i) of your request, having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that documents 1, 2, 2.1, 3, 4, 5, 5.2, 5.3, 6, 6.2 and 6.3 identified may be partially disclosed. Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of personal data) and Article 4(2), first indent of the Regulation (EC) (protection of commercial interests).

Furthermore, I regret to inform you that access to documents 2.2, 3.1, 4.1, 5.1, 5.4, 6.1, 6.4, 7, 7.1, 7.2 and 7.3 cannot be granted as disclosure is prevented by exceptions to the right of access laid down in Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001 (protection of the public interest as regards public security), Article 4(2), third indent of (protection of purpose of inspections, investigations and audits) and Article 4(3), first subparagraph of the Regulation (decision-making process).

#### 1) Partially disclosed documents

- *Protection of personal data*

With regards to the identified documents 1, 2, 2.1, 3, 4, 5, 5.2, 5.3, 6, 6.2 and 6.3, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;

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<sup>2</sup> In line with the third amendment of the HOME/2020/AMIF/AG/EMAS/00127 Grant Agreement, signed on 17 February 2022 (Ares(2022)1358340)

- the names/initials and contact details of other natural persons;
- handwritten signatures/abbreviated signatures of natural persons;

Article 9(1)(b) of the Data Protection Regulation<sup>3</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 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.

- *Protection of commercial interests*

The documents 1, 2, 2.1, 3, 4, 5, 5.2, 5.3, 6, 6.2 and 6.3 that you seek to obtain contain commercially sensitive information of the Member State that submitted them.

The progress reports, including their annexes, contain information to methodologies, internal organization, particular know-how, strategy and other country specific proprietary information with competitive value. Examples of such proprietary information contained in these documents are the description of the implemented activities, the possible mitigation measures taken, the results envisaged and reasoning how resources are spent on the activities.

Given the competitive procedure where grant applications are awarded without the publication of calls for proposals but within total budget ceilings foreseen under annual work programmes and following an evaluation by a specifically appointed Evaluation Committee- from which the above mentioned project originates, the full disclosure of the documents requested would undermine the protection of the interests of the Member State that submitted them, as putting this information in the public domain would affect its future competitive position<sup>4</sup>.

Therefore, the exception laid down in Article 4(2), first indent of Regulation 1049/2001 applies to the documents.

The exception laid down in Article 4(2) of Regulation 1049/2001 applies unless there is an overriding public interest in full disclosure of the document. I observe that you have not provided any arguments to support any pressing need for the public to obtain access to the

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<sup>3</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.

<sup>4</sup> The exception relating to commercial interests can also be applied to non-commercial entities: Judgment of the General Court of 21 October 2010, Kalliope Agapiou Joséphidès v European Commission and Education, Audio-visual and Culture Executive Agency (EACEA), T-439/08, ECLI:EU:T:2010:442, paragraphs 127-128

documents. We have also considered whether there could be an overriding public interest in full disclosure but we have not been able to identify such an interest.

## 2) Undisclosed documents

- *Protection of public security*

The first indent of Article 4(1)(a) of Regulation 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'.

The documents 2.2, 3.1, 4.1, 5.1 and 6.1 contain visual sensitive information (photos) related to the construction of the new facilities on the islands of Samos, Kos and Leros. This includes the information about the number of facilities, security measures, precise location etc. Public disclosure of this information would undermine public security, for example by facilitating attacks on the migrants and staff on the ground.

Therefore, the exception laid down in Article 4(1)(a), first indent of Regulation 1049/2001 applies to these documents.

- *Protection of purpose of audits*

Pursuant to Article 4(2), third indent of Regulation 1049/2001, “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure”.

As foreseen in Article 27 of the General Conditions of the Grant Agreement, “the Commission may carry out technical and financial checks and audits in relation to the use of the grant. It may also check the statutory records of the beneficiary for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

*Information and documents provided in the framework of checks or audits shall be treated on a confidential basis. In addition, the Commission may carry out interim or final evaluation of the impact of the action measured against the objective of the Union programme concerned. Checks, audits or evaluations made by the Commission may be carried out either directly by its own staff or by any other outside body authorized to do so on its behalf. Such checks, audits or evaluations may be initiated during the implementation of the Agreement and for a period of five years starting from the date of payment of the balance. This period shall be limited to three years if the maximum amount specified in Article I.3 is not more than EUR 60 000. The check, audit or evaluation procedure shall be deemed to be initiated on the date of receipt of the letter of the Commission announcing it”.*

Documents 5.4 and 6.4 are the Audit Certificates submitted by the beneficiary within the interim technical reports. These documents are the basis for possible technical and financial checks or audits and interim and final evaluations, under the provisions indicated above. The audits, controls and their follow up, envisaged by the above-mentioned clause, are audits in the sense of Article 4(2), third indent of Regulation 1049/2001.

Therefore, the exception laid down in Article 4(2), third indent of Regulation 1049/2001 applies to these documents.

We have considered whether partial access could be granted to the documents requested, however, for the same reasons as explained above, it is not possible to grant access to documents 5.4 and 6.4, which are entirely covered by the exception in Article 4(2), third indent of Regulation 1049/2001.

The exception laid down in Article 4(2) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the document. I observe that you have not provided any arguments to support any pressing need for the public to obtain access to the documents. We have also considered whether there could be an overriding public interest in full disclosure but we have not been able to identify such an interest.

- *Protection of the institution's ongoing decision-making process*

The documents 7, 7.1, 7.2 and 7.3 identified, were submitted by the Greek Ministry of Migration and Asylum on 30 March 2022, in line with the provisions of Article I.4 of the Special Conditions of the Grant Agreement. The abovementioned documents are still subject to possible observation by the European Commission.

Its disclosure would seriously undermine the protection of the ongoing decision-making process of the Commission, as it would reveal preliminary views of the Commission's services, which must be free to explore all possible options in preparation of their observations on the report concerned, free from external pressure.

Therefore, the exception laid down in Article 4(3), first subparagraph of Regulation 1049/2001 applies to this document.

We have considered whether partial access could be granted to the documents requested, however, for the same reasons as explained above, it is not possible to grant access to documents 7, 7.1, 7.2 and 7.3, which are entirely covered by the exception in Article 4(3), first subparagraph of Regulation 1049/2001.

The exception laid down in Article 4(3) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the document. I observe that you have not provided any arguments to support any pressing need for the public to obtain access to the documents. We have also considered whether there could be an overriding public interest in full disclosure but we have not been able to identify such an interest.

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 this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-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)

Yours sincerely,

*(e-signed)*  
Monique PARIAT

Enclosure: Documents 1, 2, 2.1, 3, 4, 5, 5.2, 5.3, 6, 6.2 and 6.3