



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels
HOME/MV

Vera DELEJA-HOTKO
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Singerstraße 109
10179 Berlin
Germany

E-mail:
v.deleja-

Subject: Your application for access to documents – GESTDEM 2022/2770

Dear Ms Deleja-Hotko,

We refer to your e-mail of 12 May 2022 in which you make a request for access to documents, registered on 16 May 2022.

Due to the wide scope of your request, covering also areas falling under the responsibility of other Directorates-General, parts of your request have been attributed to other Directorates-General¹. This reply relates only to the documents held by Directorate-General for Migration and Home Affairs registered under the above-mentioned reference number. You will receive the replies from the other respective Directorates-General in due course.

You request access to documents related to “*meetings between representatives of the Commission and the International Centre for Migration Policy Development (ICMPD)*” and attach the following list of DG HOME-relevant items:

- “4) 25 May 2021 - Raul Hernandez Sagrera - Cooperation on migration,
- 5) 25 May 2021 - Commissioner Ylva Johansson - Cooperation on migration,
- 12) 23 Apr 2020 - Commissioner Ylva Johansson - Exchanges of views,
- 13) 23 Apr 2020 - Raul Hernandez Sagrera - Exchanges of views,
- 19) 26 Apr 2018 - Director-General Paraskevi Michou - Discussion on the major migration priorities for the EU,
- 24) 07 Sep 2016 - Diane Schmitt - External dimension of migration,
- 26) 27 Jul 2016 - Francesco Luciani - Migration management.”

¹ GESTDEM 2022/2767 (SG), 2022/2768 (DG INTPA), 2022/2771 (DG NEAR), 2022/2772 (DG ECHO), 2022/2773 (DG CNECT) and 2022/2774 (DG BUDG).

1. ASSESSMENT AND GENERAL CONCLUSIONS

Regarding **items 19, 24 and 26 of your application** we regret to inform you that **the Commission does not hold any documents** that would correspond to the description given in your application. As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil this part of your request.

However, we have identified two following documents as falling within the scope of **items 4, 5, 12 and 13** of your application:

* Flash report: Meeting Commissioner Ylva Johansson with ICMPD Director General Dr. Michael Spindelegger, 23/04/2021, registered under Ref. Ares(2020)2485717 (document 1);

* Meeting report: Meeting Commissioner Johansson - DG ICMPD Spindelegger, 25/05/2021, registered under Ref. Ares(2022)4832901 (document 2).

Having examined the documents requested under the provisions of Regulation 1049/2001, I have come to the conclusion that document 1 should be fully disclosed and that document 2 should be partially disclosed.

A complete disclosure of document 2 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, and by the exception concerning the protection of the public interest as regards international relations, outlined in Article 4(1)(a), third indent, of the Regulation.

1.1 Protection of privacy and integrity

Document 2 contains contain the names and contact details of Commission officials not forming part of senior management.

Article 9(1)(b) of the Data Protection Regulation² 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 application, you do not express any particular interest to have access to these personal data nor do you put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that access cannot be granted to the redacted personal data included in the document in question.

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.

1.2 Protection of public interest as regards international relations

The third indent of Article 4(1)(a) of Regulation No 1049/2001 lays out **an exception based on the need to protect the public interest as regards international relations**. The Regulation states that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations”.

When it comes to the interests protected by Article 4(1)(a), according to settled case law of the Court of Justice, “*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*”.³ Similarly, the Court stressed that 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*.”⁴

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*.”⁵

Moreover, as regards the interests protected by the above-mentioned article, “*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*.”⁶

Document 2, which is of an internal nature and contains a section on the EU-Turkey Statement, has been examined in light of the above-mentioned case law. As it contains comments regarding the EU approach and preferences in the context of sensitive negotiations related to Turkey, revealing such details would jeopardise the EU-Turkey relationship and ongoing negotiations related to migration and asylum. As such, public disclosure of the redacted parts of documents would negatively affect the Commission's effectiveness in the negotiations in a realistic and non-hypothetical way.

I conclude that there is a reasonable and concrete risk that public disclosure of the requested document is likely to harm public interest in the area of international relations. As such, access to the document must to be refused under the exception laid down in the third indent

³ Judgment of the Court of Justice of 1 February 2007, C-266/05 P, *Sison v Council*, EU:C:2007:75, paragraph 46.

⁴ Judgment of the Court of Justice of 3 July 2014, *Council v In’t Veld*, C-350/12, EU:C:2014:2039, paragraph 63.

⁵ Judgment of the General Court of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, EU:T:2007:114, paragraph 40.

⁶ Judgment of the General Court of 11 July 2018, *ClientEarth v European Commission*, T-644/16, EU:T:2018:429, paragraph 23. See also Judgment of the Court of Justice of 3 July 2014, *Council v In’t Veld*, C-350/12, EU:C:2014:2039, paragraph 63.

of Article 4(1)(a) of Regulation 1049/2001 (protection of the public interest as regards international relations). Therefore the relevant parts of the document in question have been redacted.

2. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation 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 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

