



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The Director-General

Brussels,

Ms Monica NGUYEN
c/o Open Knowledge Foundation
Singerstrasse 109
10179 Berlin
Germany

By email only:

m.nguyen.z5xknwm3pd@fragdenstaat.de

Subject: Your application for access to documents

Ref.: EASE 2023/1108

Dear Ms Nguyen,

I refer to your application of 17 February 2023¹, in which you made a request for access to documents, registered under the above-mentioned reference number. You requested access to:

- “1) A detailed list of 251 EUTF programmes*
- 2) Details of which African countries have received how much money has been transferred from the EU for which action*
- 3) Detailed mapping of the costs of providing digital technologies (in the field of economy and employment, strengthening population resilience, improving migration management and improving governance and conflict prevention)*
- 4) Indication of which firms have provided the technologies*
- 5) Indicate the functionalities of the technologies used*
- 6) Indicate which technologies will be sent to African partner countries*

¹ Ref. Ares(2023)1166214.

7) *EU assessment of the Emergency Trust Fund since its inception in 2015*”.

I also refer to our requests for clarification of 24 February 2023² and 18 March 2023³ and to your responses thereto of 27 February 2023⁴ and 22 March 2023⁵.

You clarified in these responses that your request concerns the:

- i) *The geographical area of:*
 - *Lake Sahel and Lake Chad Basin: Burkina Faso, Cameroon, Chad, Cote d'Ivoire, Gambia, Ghana, Guinea, Mali, Mauritania, Niger, Nigeria, Senegal;*
 - *Horn of Africa: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tanzania, Uganda;*
 - *North Africa Morocco, Algeria, Tunisia, Libya, Egypt.*
- ii) *Only the EUTF Emergency Trust Fund/No other EU programmes*
- iii) *The period between 2016 and 2022 and*
- iv) *In terms of digital technologies, all biometric technologies, mainly eyes and facial recognition, hand and fingerprinting, recognition of sexual identity and language analysis*

I also refer to our email of 17 April 2023⁶, in which we explained that an extended time limit is needed in accordance with Article 7(3) of Regulation (EC) No 1049/20013 to prepare a complete reply to your request due to internal consultations.

Please note that 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 another Directorate-General⁷. This reply relates only to the documents held by the Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR).

The following documents have been identified as falling under the scope of your request:

A. For points 1 and 2 of your request:

1. All the programmes (CL1) approved under the EUTF for Africa are listed under Annex I to the 2022 Annual report that can be found here: <https://trust-fund-for-africa.europa.eu/system/files/2023-05/MNBE23001ENN.pdf>
2. All annual reports since 2016 are available here: https://trust-fund-for-africa.europa.eu/our-mission/objective-and-governance_en

² Ref. Ares(2023)1368337.

³ Ref. Ares(2023)1957512.

⁴ Ref. Ares(2023)1603275.

⁵ Ref. Ares(2023)2077990.

⁶ Ref. Ares(2023)2706471.

⁷ EASE Ref No. 2023/1152 - Directorate-General for International Partnerships (DG INTPA).

3. Direct Support to partner countries is only provided via Budget Support programmes for a limited number of projects; more information can be found here: https://trust-fund-for-africa.europa.eu/index_en

B. For points 3-6 of your request:

1. T05-EUTF-NOA-LY-08-01 (T05.1234) - Libya- Final Report and payment request, Ares(2021)5846598
 - a. Libya_T05-EUTF-NOA-LY-08-01_Narrative Report.pdf
2. UNHCR Quarterly Report #2 - T05-EUTF-NOA-08-01 (T05.1234), Ares(2020)7124907
 - a. EUTF Libya Phase III Quarterly Report #2.pdf
3. SUBMISSION of Final Report T05-EUTF-NOA-LY-11 (T05.1506), Ares(2022)6370626
 - a. UNHCR Final Report EUTF Libya Phase IV 2021 T05.1506.pdf
4. SUBMISSION of Final Report: T05-EUTF-REG-REG-04-01 (T05.756), Ares(2022)8320903
 - a. ETM Libya Final Report T05.796.pdf
5. Contract 756: Approval of annual report, Ares(2022)8107814
 - a. EUTF_Q4 and 3rd Annual Report_August 2021 to July 2022_final 121022_rev with comments_23112022FINAL
6. T05-756: 2nd Annual report and Request for payment number: 3, Ares(2022)1127746
 - a. Q9A_EUTF Report_August to January 2022_final_080222.docx
7. RE: 1st Annual report, Ares(2021)1772066
 - a. EUTF_1st Annual Report_August 2019 to August 2020_FINAL after EU review_10022020.pdf
8. T05-EUTF-NOA-REG-05 (T05.756) - Addendum No. 2 "Dismantling the criminal networks operating in North Africa and involved in migrant smuggling and human trafficking" UNODC, Ares(2022)5430047
 - a. ANNEX II DoA extension CLEAN.docx

C. For point 7 of your request:

1. The final report of the mid-term Evaluation of the EUTF for Africa is available here: https://trust-fund-for-africa.europa.eu/system/files/2021-02/mtr_final_report_1.pdf
2. The reports from the monitoring and learning systems are also available here: https://trust-fund-for-africa.europa.eu/results/monitoring-and-evaluation_en

Kindly note that a final evaluation of the EUTF for Africa should take place towards the end of the implementation period (i.e. before 31 December 2025).

It is also to be borne in mind that DG NEAR is handling Trust Fund projects in indirect management which means that the responsibility for the identification, assessment and procurement for potential biometric technology lies with the implementing partners. This information reaches us through regular reporting.

Having examined the documents that you requested under the provisions of Regulation (EC) No 1049/2001⁸, I have decided that:

- Full access can be granted to documents A 1-3 and C 1-2.
- Access must be refused to documents B 1-8 as disclosure is prevented by the exception to the right of access laid down in Article 4(1)(a) third indent (protection of the public interest as regards international relations) of Regulation (EC) No 1049/2001.

The justifications are as follows:

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'*⁹.

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'*¹⁰.

Public disclosure of documents B 5, 6, 7 and 8 would severely affect the international relations with the State of Libya, given the content of the documents which provides sensitive information concerning law enforcement as well as information which could jeopardize relationships with national counterparts (e.g identification of border crossing points and key hub cities, national agencies to receive support and types of equipment and software programmes to be procured, human rights situation/ HRDDP in Libya, political challenges, etc). Sharing these documents may be interpreted as a security breach and could hence negatively impact the relationships between the governments of Egypt, Libya, Morocco and Tunisia as well as the future implementation of projects on the security sector reform.

⁸ 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.

⁹ Judgment of 3 July 2014, *Council v In 't Veld*, C-350/12, paragraph 63.

¹⁰ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 40.

In addition, public disclosure of documents B 1, 2, 3 and 4 would severely affect the international relations with the State of Libya, given the content of the documents within the complex and politically sensitive operational context in which projects are being implemented in Libya. This, in turn, may result in limitation of access to people of concern resulting in reduced ability to address their key protection and life-saving assistance needs.

Therefore, there is a risk that disclosure of these documents 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.

Partial Access

We have considered whether partial access could be granted to documents B 1-8 currently withheld but this was deemed impossible, as the sensitive elements are integral part 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 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 sincerely,

[e-signed]

Gert Jan KOOPMAN