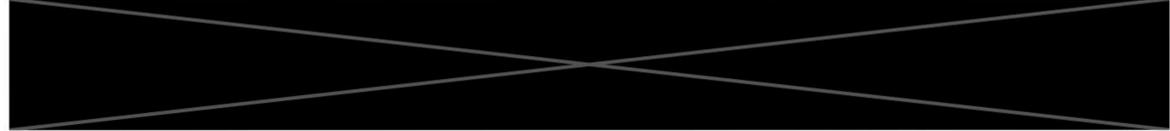




Brussels, 01/02/2021
devco.d.1.dir(2021)186130

Sent onl to the oallowin email addresses:



Subject: Your application for access to documents – Ref GESTDEM 2019/5428

Dear Madam/ Sir,

We refer to your e-mail dated 29 May 2019 in which you make a request for access to documents, registered on 8 June 2019 under the abovementioned reference number. We also refer to your e-mail dated 4 June 2020, in which you provided clarifications regarding your initial request, and to our email of 12 June 2020 by which the time limit for handling your request was extended.

1. SCOPE OF YOUR REQUEST

In your initial request, you ask for access to:

- 1. Documents relating to any kind of transfer (including sharing, disclosing, storing or otherwise making available) of personal data processed in surveillance, police, migration or biometric databases maintained by EU bodies and/or EU member states to any immigration, border control, prosecution, police or law enforcement authority of third countries (i.e. non EU member states) for the purposes of preventing, detecting or combatting crime. If necessary to narrow the scope of third countries, third countries should be deemed to mean in the following countries: Turkey, Montenegro, North Macedonia, Albania, Serbia, Kosovo, Bosnia and Herzegovina, as well as any African country.*

For each transfer, please provide all documents that relate to the agreements between the Agency and the third country regarding the transfer to and/or the further processing by the third country, including:

- a. all provisions that ensure that the Agency and the authority or authorities of the third country would have abided by and would abide by the principles enshrined in Article 4 of Regulation (EC) No 45/2001 and Article 4 of EU Regulation 2018/1725, respectively;*
- b. a precise description of the exact categories of the personal data transferred and/or further processed by third countries, including whether these include personal data revealing nationality, information contained in asylum applications or applications for international protection, racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation, data revealing criminal convictions or offences;*
- c. the exact authority or authorities of the third country that were the recipients of the personal data;*

d. the legal basis and the exact purpose of each transfer, including reference to the legal mechanism that allowed for the transfer;

e. the original sources of this personal data, in case it has not been provided by data subjects;

f. all security measures taken by the Agency and/or the authority or authorities of the third country to protect the personal data; Company Limited by Guarantee (England & Wales): 4354366 Registered Charity (England & Wales): 1147471 2

g. whether any of the personal data has been subject to a data breach and, in case it has, the potential risks to which personal data was exposed, and the procedures that the Agency and/or third country authorities followed to mitigate these risks;

h. whether Data Protection Impact Assessments were conducted in the context of transfer agreements and/or for each transfer, in accordance with Regulation 2018/172 or any other previous instrument. Please provide copies of all relevant documents containing an assessment or evaluation of the impact of the envisaged transfer on the protection of personal data, as well as the documents containing information about the risks posed by the further processing by the authority or authorities of third countries and how these were mitigated.

2. Documents relating to any kind of direct or indirect transfer (including via exporting, leasing, selling, donating or any other transaction) of surveillance, cyber-surveillance, policing or border control equipment to any immigration, border control, prosecution, police or law enforcement authority of third countries (i.e. non EU member states) for the purposes of preventing, detecting or combatting crime and/or preventing irregular migration. If necessary to narrow the scope of third countries, third countries should be deemed to mean in the following countries: Turkey, Montenegro, North Macedonia, Albania, Serbia, Kosovo, Bosnia and Herzegovina, as well as any African country.

The equipment mentioned in the previous sentence should include, but not be limited to, items specially designed to enable the covert intrusion into information and telecommunication systems with a view to monitoring, extracting, collecting and analysing data and/or incapacitating or damaging the targeted system, such as mobile telecommunication interception equipment, intrusion software, intrusion hardware, monitoring centres, lawful interception systems and data retention systems, digital forensics, audio bugs, GPS tracking devices, cameras, drones, probes and fibre taps, malware, spyware, IMSI catchers, state trojans, facial recognition technology, voice recognition technology, software that monitors social media activity etc.

For each transfer, please provide all documents that contain information about any of the following:

- a. the specific authority and the third country to which the transfer relates;
- b. whether the transfer involved any private entities. In that case please provide documents containing details about the private entities' involvement in these transfers;
- c. the specific equipment that was transferred, including equipment specifications and manufacturer;
- d. whether the equipment was provided in the context of any official or unofficial security, financial or any other assistance from the Agency and/or EU member states and/or EU bodies to the third country. Please provide documents that inform about the specific assistance programme that each transfer falls under, together with the relevant documents authorising it;
- e. the legal basis under which the transfer took place;
- f. all internal and external, official and unofficial communications and agreements between the Agency and the authority or authorities of the third country regarding the purposes and uses of the equipment, including all provisions that could ensure that the Agency and the authority or authorities of the third country would adhere by EU principles and/or would not use the equipment contrary to EU human rights law standards. In particular, please provide all documents that contain information about whether any risk and/or due diligence

assessments, evaluations or audits were conducted, and, in case there were, all documents containing specific information about the type and content of these risk and/or due diligence assessments, evaluations or audits;

g. considering that such equipment transfers could result in high-scale processing of personal data, whether Data Protection Impact Assessments were conducted, in accordance with Regulation 2018/172 or any other previous instrument. Please provide copies of all relevant documents containing an assessment or evaluation of the impact of the envisaged transfer on the protection of personal data, as well as the documents Company Limited by Guarantee (England & Wales): 4354366 Registered Charity (England & Wales): 11474713 containing information about the risks posed by the further processing by the authority or authorities of third countries and how these were mitigated.

3. *Documents relating to any kind of official or unofficial training provided by the Agency and/or EU Member States and/or EU bodies to any immigration, border control, prosecution, police or law enforcement authority of third countries (i.e. non EU member states) for the purposes of preventing, detecting or combatting crime. If necessary to narrow the scope of third countries, third countries should be deemed to mean in the following countries: Turkey, Montenegro, North Macedonia, Albania, Serbia, Kosovo, Bosnia and Herzegovina, as well as any African country.*

The training mentioned in the previous sentence should include any training in the use of any of the technologies listed in point 2 above, as well as training in investigative techniques, cyber and online investigative techniques, interrogations and interviews of third country nationals, leadership and core competencies, general education courses on security and/or intelligence.

For each training, please provide all documents that contain information about any of the following:

- a. the training schedule which includes start and end date, the course title, the agency providing the training, the unit or department affiliations of persons receiving the training, as well as information about any other persons participating in the training, specifically their unit/department affiliation and their country of origin;*
- b. all education materials which were provided to participants before, during or after the training;*
- c. objectives and expected outcomes of the training;*
- d. whether the training was facilitated, wholly or partially, by any private entities, and, in that case, details about the private entity's involvement in the training;*
- e. the legal basis under which the training was provided;*
- f. all internal and external, official and unofficial communications and agreements between the Agency and the authority or authorities of the third country regarding the purposes of the training, including all provisions that could ensure that the Agency and the authority or authorities of the third country would adhere by EU principles and/or would not use the techniques, knowledge or information provided during the training in a manner that would be contrary to EU human rights law standards. In particular, please provide all documents that contain information about whether any risk and/or due diligence assessments, evaluations or audits were conducted, and, in case there were, all documents containing specific information about the type and content of these risk and/or due diligence assessments, evaluations or audits;*
- g. whether the training was provided in the context of any official or unofficial security, financial or any other assistance from the Agency and/or EU member states and/or EU bodies to the third country. Please provide documents that inform about the specific assistance programme that each transfer falls under, together with the relevant documents authorising it.*

4. *Documents relating to any kind of financing provided to any immigration, border control, prosecution, police or law enforcement authority of third countries (i.e. non EU member states) for the purposes of preventing, detecting or combatting crime and/or preventing irregular migration. If necessary to narrow the scope of third countries, third countries should be deemed to mean in the following countries: Turkey, Montenegro, North Macedonia, Albania, Serbia, Kosovo, Bosnia and Herzegovina, as well as any African country.*

The operations and procurement financing mentioned in the previous sentence should include, but not be limited to, any payment to any public or private entity, both within or outside the EU, or third country authority for purchasing any of the technology mentioned in point 2 above, and/or any payment of salaries, reimbursement, benefits and travel expenses for any officials or employees of any public or private entity, both within or outside the EU, or of any third country authority, who are involved in surveillance or border control activities, as well as any payment to any public or private entity, both within or outside the EU, or third country authority and/or agency for purchasing basic equipment such as It infrastructure and software, vehicles, buildings Company Limited by Guarantee (England & Wales): 4354366 Registered Charity (England & Wales): 1147471 4 etc.

For each financing activity, please provide all documents that contain information about any of the following:

- a. the specific authority or agency and the third country to which the financing relates;*
- b. whether the financing involved any private entities. In that case please provide documents containing details about the private entities' involvement in the financing with precise information about the payments received and the purposes for which these payments were facilitated;*
- c. whether the payment was provided in the context of any official or unofficial security, financial or any other assistance from the Agency and/or EU member states and/or EU bodies to the third country. Please provide documents that inform about the specific assistance programme that each payment falls under, together with the relevant documents authorising it;*
- d. the legal basis under which the financing took place; e. all internal and external, official and unofficial communications and agreements between the Agency and the authority or authorities of the third country regarding the purposes and uses of the provided funds, including all provisions that could ensure that the Agency and the authority or authorities of the third country would adhere by EU principles and/or would not use the payments obtained contrary to EU human rights law standards. In particular, please provide all documents that contain information about whether any risk and/or due diligence assessments, evaluations or audits were conducted, and, in case there were, all documents containing specific information about the type and content of these risk and/or due diligence assessments, evaluations or audits.*

5. *Documents relating to the involvement of the Agency and/or EU Member States and/or other EU bodies in the negotiation, promotion, abolition or adoption of any laws or frameworks that seek to regulate intelligence sharing, communications data retention, communications surveillance, equipment interference, interception of communications or any other investigatory powers framework in a third country. The involvement mentioned in the previous sentence should include, but not be limited to, any legal and/or technical assistance provided by the Agency and/or EU Member States and/or other EU bodies, such as observations, remarks, case-studies, legal assessments, risk assessments, policy briefs, policy positions, statistics, public consultation documents, country positions, Agency positions, recommendations, communications and emails, notes, minutes and meeting documents, impact assessments, audits and evaluation documents.*

B. In relation to your suggestion to identify "documents that have been produced by the Commission or which have become the absolute property of the Commission on the basis of applicable contractual clauses, we would like to draw Your attention to Articles 2 and 3 of Regulation 1049/2001. Article 3 of Regulation 1049/2001 defines document as "any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility. Moreover, Article 2 of Regulation 1049/2001 states that the Regulation "shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.

We therefore ask to be provided with access to any documents, as defined in Article 3 of the Regulation, that might be held or received by or in possession of the Commission, regardless of their author, in all areas of activities that the subject matter of our access to documents request relates to. This should not only include documents produced under or relating to the ODA programme.

C. As far as any documents might be associated with the Development Assistance Committee (DAC), we ask for the following DAC codes to be applied for the identification of relevant documents:

- a. 15110 (Public sector policy and administrative management)*
- b. 15124 (General personnel services)*
- c. 15126 (Other general public services)*
- d. 15113 (Anti-corruption organisations and institutions)*
- e. 15130 (Legal and judicial development) Company Limited by Guarantee (England & Wales): 4354366 Registered Charity (England & Wales): 1147471 5*
- f. 15131 (justice, law and order policy, planning and administration)*
- g. 15132 (Police)*
- h. 15134 (Judicial affairs)*
- i. 15136 (Migration)*
- j. 15152 (Legislatures and political parties)*
- k. 15190 (Facilitation of orderly, safe, regular and responsible migration and mobility)*
- l. 15210 (Security system management and reform)*
- m. 15220 (Civilian peace-building, conflict prevention and resolution)*
- n. 16063 (Narcotics control)*
- o. 22040 (Information and communication technology ICT)*

These should only applied to DAC related documents and should not preclude any searches carried out by your institution with regard to documents not reported under or related to ODA.

Clarifications

- (i) For the purposes of this request, documents shall include but not be limited to: all official and unofficial, electronic and hard-copy documents, working arrangements, templates, databases, reports, studies, guidance or policy documents, reviews, minutes, statistics, directives, instructions, circulars, service notes, contracts, agreements, receipts, audits, risk and impact assessments, statistics, forms, requests, letters, emails, decisions.*
- (ii) If possible, please provide the documents requested for each of the five (5) points mentioned above separately.*
- (iii) Please provide all requested documents in English, and, if not possible, in French, German, Italian, Greek or Spanish.*
- (iv) Please provide the documents in an electronic format to both*

As the initial request implied reviewing a very large number of documents, and as foreseen in Article 6 of *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*, a fair solution had to be found, through informal exchanges.

Following those exchanges, you specifically requested documents regarding the Western Africa Police Information System Programme (WAPIS 3)/decision number **38921**.

The European Commission has identified the following documents as falling under the scope of your request:

- **Doc. 1.1:** Special Conditions
- **Doc 1.2:** Description of the Action (including the Logical Framework of the Project)
- **Doc 1.3:** General Conditions for PA Grant or Delegation Agreements
- **Doc 1.4:** Budget for the Action
- **Doc. 1.5:** Financial identification form
- **Doc. 1.6:** Standard request for payment
- **Doc 1.7:** Communication and Visibility Plan
- **Doc 2.1:** Addendum
- **Doc 2.2:** Annex I Description of the Action (including the Logical Framework of the Project)
- **Doc 2.3:** Budget for the Action
- **Doc. 2.4:** Communication and Visibility Plan
- **Doc. 2.5:** Monitoring and Evaluation Plan
- **Doc. 3.1:** Report 1 : November 2017 - May 2018
- **Doc. 3.2:** Report 2 : May 2018 – December 2018
- **Doc 3.3:** Report 3 : January 2019 - October 2019
- **Doc. 3.4:** Report 4 : November 2019 – April 2020
- **Doc. 3.5:** Executive Summary /Report 1 : November 2017 - May 2018
- **Doc. 3.6:** Executive Summary /Report 2 : May 2018 – December 2018
- **Doc. 3.7:** Executive Summary /Report 3 : January 2019 - October 2019
- **Doc 3.8:** Executive Summary /Report 4 : November 2019 – April 2020
- **Doc. 4.1:** Minutes 1st Steering Committee
- **Doc. 4.2:** 2nd Steering Committee
- **Doc. 4.3:** 3rd Steering Committee
- **Doc.4.4:** 4th Steering Committee
- **Doc. 5.1:** Legal Seminar 1
- **Doc. 5.2:** Legal Seminar 2
- **Doc 6:** Template of MoU between INTERPOL and partner countries
- **Doc 7:** Best practice guide on data protection

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that some of them may be fully or partially disclosed, while access to certain documents has to be fully denied.

2.1. DOCUMENTS FULLY DISCLOSED

Full access is provided to the following documents:

- **Doc. 1.3:** General Conditions for PA Grant or Delegation Agreement
- **Doc. 2.1:** Addendum
- **Doc. 2.5:** Monitoring and Evaluation Plan
- **Doc. 7:** Best practice Guide on data protection

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

2.2. DOCUMENTS PARTIALLY DISCLOSED

Partial disclosure refers to documents in which parts have been redacted as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

This is the case of documents under numbers 1.1, 1.2, 1.7, 2.2, 2.4, 3.5, 3.6, 3.7, 3.8, parts of which fall under one or more of the exceptions of Article 4 of Regulation (EC) No 1049/2001.

Partial disclosure also refers to those documents in which parts have been redacted as they contain information not falling under the scope of your request.

The detailed reasons for partial disclosure of documents are set out below.

2.2.1. Protection of privacy and the integrity of the individual

- Doc 1.1: Special Conditions

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is 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/EC1 ('Regulation 2018/1725').

The documents to which you request access contain personal data, in particular names, functions, contact details, initials/paraphs or handwritten signatures.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and if the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be

¹ Official Journal L 205 of 21.11.2018, p. 39.

prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts. As to the handwritten signatures and initials of natural persons, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, 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.

2.2.2. Protection of the public interest as regards public security

- **Doc. 1.2:** Description of the Action (including the Logical Framework of the Project)
- **Doc. 2.2:** Annex I Description of the Action (including the Logical Framework of the Project)
- **Doc. 3.5:** Executive Summary /Report 1 : November 2017 - May 2018
- **Doc. 3.6:** Executive Summary /Report 2 : May 2018 – December 2018
- **Doc. 3.7:** Executive Summary /Report 4 : November 2019 – April 2020

Having examined the above mentioned documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that they may be partially disclosed (Article 4(6) of Regulation 2001/1049). Some parts of the documents pertaining to the existing police information systems in West Africa, their databases, their organisation, and related analysis, have been redacted as their disclosure is prevented by Article 4(1)(a), first indent of Regulation 1049/2001, which 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'.

Sensitive information on the organization; tools and capabilities of the law enforcement agencies, analysis on those matters, strategies being discussed by the authorities internally, have been blanked out.

Public disclosure of such details of the proposed action would undermine the very purpose of the action, as it would allow interested parties to know in advance the details of databases, that are an important tool against criminal networks and terrorism.

Disclosure of these details would compromise future initiatives on the ground in the field of law enforcement and providing full details on the strategies, approaches, training, materials and equipment would make them more vulnerable to the very individuals and/or groups targeted by these initiatives. It is not possible to describe the withheld parts in more detail without jeopardising the public security, which is the very interest Article 4(1)(a), first indent of Regulation 1049/2001 aims to protect.

The General Court has confirmed that 'the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest and, consequently, [...] the Court's review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exceptions 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 powers².

Public access, at this stage, would undermine the very purpose of the intended action aiming to contribute to fight against organised crime. This, in turn, would undermine the public interest as regards public security. This is a real and non-hypothetical risk, as the requested documents contain details about the intended action.

We therefore conclude that the refusal of access, at this stage, to the withheld parts of above mentioned documents concerning security-related details of the proposed action is justified on the basis of Article 4(1)(a), first indent of Regulation (EC) No 1049/2001.

2.2.3. Protection of commercial interests, including intellectual property

- **Doc 1.2:** Description of the Action (including the Logical Framework of the Project)
- **Doc 1.7:** Communication and Visibility Plan
- **Doc. 2.2:** Annex I Description of the Action (including the Logical Framework of the Project)
- **Doc 2.4:** Communication and Visibility Plan
- **Doc. 3.5:** Executive Summary /Report 1 : November 2017 - May 2018

Article 4(2), first indent of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where 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’.

The redacted parts of above mentioned documents describe in detail the methodology and know-how of the implementing partner, including details of the activities, approach, strategy, analysis of operational choices, timeframes and other proprietary information with competitive value.

Examples of such proprietary information contained in the redacted parts of the documents are the description of the planned and implemented activities, the elaboration of encountered implementation problems, the results obtained and their comparison with the initial objectives or reasoning how resources were spent for the activities carried out.

Given the competitive value of this information, disclosure of the withheld parts of the aforementioned documents would undermine the protection of the interests of the implementing partner that submitted it, as putting this information in the public domain would affect its future competitive position³.

As a consequence, there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the commercial interests, including intellectual property, of the implementing partner. We conclude, therefore, that the refusal of access to the withheld parts of documents listed above is made on the basis of the exception laid down in the first indent of Article 4(2) (protection of commercial interests, including intellectual property) of Regulation (EC) No 1049/2001.

² Judgement of the General Court, at the time Court of First Instance, of 25 April 2007 in case T-264/04, *WWF European Policy Programme v Council*, EU:T:2007:114, paragraph 40.

³ The exception relating to commercial interests can also be applied to non-commercial entities. Judgment of 21 October 2010, *Kalliope Agapiou Joséphidès v European Commission and Education, Audiovisual and Culture Executive Agency (EACEA)*, T-439/08, ECLI:EU:T:2010:442, paragraphs 127-128.

2.2.4. Protection of the public interest as regards international relations

- **Doc. 3.5:** Executive Summary /Report 1 : November 2017 - May 2018
- **Doc. 3.6:** Executive Summary /Report 2 : May 2018 – December 2018
- **Doc. 3.7:** Executive Summary /Report 3 : January 2019 – October 2019
- **Doc. 3.8:** Executive Summary/ Report 4: November 2019 – April 2020

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 far as the protection of international relations is concerned, the EU Court has acknowledged that the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest⁴.

After careful assessment, we have concluded that documents 3.5, 3.6, 3.7, 3.8 contain information that, if disclosed, would negatively affect the EU's international relations with countries participating in the WAPIS programme, and the regional organisation involved (ECOWAS).

Those documents contain project progress updates, with detailed description of the activities and analysis. The disclosure of certain parts of the documents falling under the scope of your request could harm the EU's and its Member States' relations with countries participating in the WAPIS programme, since they include political assessments and opinions on the collaboration with the countries participating in the WAPIS programme.

Consequently, we conclude that disclosure of parts of the abovementioned documents would seriously undermine the protection of the public interest as regards international relations, in a reasonably foreseeable and non-hypothetical manner, pursuant to article 4(1)(a), third indent of Regulation (EC) No 1049/2001.

2.3. DOCUMENTS NOT DISCLOSED

We regret to inform you that your application cannot be granted for documents 1.4, 1.5, 1.6, 2.3, 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 4.3, 4.4, 5.1, 5.2, 6, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001. We have considered whether partial access could be granted to the documents requested under Article 4(6) of this Regulation, however, no meaningful partial access could be granted without undermining the interests protected under Article 4 of the Regulation.

2.3.1 Protection of privacy and the integrity of the individual

Article 4(1) (b), of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

The following documents have not been disclosed:

- **Doc. 4.1.** Minutes of the 1st Steering Committee
- **Doc. 4.2** Minutes of the 2nd Steering Committee
- **Doc. 4.3** Minutes of the 3rd Steering Committee

⁴ Judgment of the Court of First Instance of 25 April 2007, in case T-264/04, *WWF European Policy Programme v Council*, EU:T:2007:114, paragraph 40.

- **Doc. 4.4** Minutes of the 4th Steering Committee
- **Doc 5.1** Minutes of the 1st Legal Seminar
- **Doc 5.2** Minutes of the 2nd Legal Seminar

The documents to which you request access contain personal data, in particular names, contact details.

For further detail on the application of this exception please refer to section 2.2.1 of this letter.

2.3.2 Protection of commercial interests, including intellectual property

Article 4(2), first indent of Regulation 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where 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’.

The following documents have not been disclosed:

- **Doc. 1.4.** Budget for the Action
- **Doc. 1.5** Financial Identification Form
- **Doc. 1.6** Standard request for payment

These documents contain information on the methodology and know-how of the implementing partner, including details of the activities, approach, strategy, analysis of operational choices and timeframes.

Disclosure, to the general public, of such information would undermine the protection of the relevant implementing partner’s expertise and strategy and thus its commercial strength.

In addition, the General Court has stressed that ‘in principle, precise information relating to the cost structure of an undertaking constitutes business secrets, the disclosure of which to third parties is likely to undermine its commercial interests’⁵.

2.3.3. Protection of the public interest as regards public security

Article 4(1)(a), first indent 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 following documents have not been disclosed:

- **Doc. 3.1:** Report 1 : November 2017 - May 2018
- **Doc. 3.2:** Report 2 : May 2018 – December 2018
- **Doc. 3.3:** Report 3 : January 2019 – October 2019
- **Doc. 3.4:** Report 4: November 2019 – April 2020
- **Doc. 4.1.** Minutes of the 1st Steering Committee
- **Doc. 4.2** Minutes of the 2nd Steering Committee
- **Doc. 4.3** Minutes of the 3rd Steering Committee
- **Doc. 4.4** Minutes of the 4th Steering Committee
- **Doc 5.1** Minutes of the 1st Legal Seminar
- **Doc 5.2** Minutes of the 2nd Legal Seminar

⁵ Judgment of 30 January 2008, Terezakis v Commission, T-380/04, EU:T:2008:19, paragraph 95.

- **Doc. 6.** Template of MoU between INTERPOL and partner countries

The documents above contain sensitive information on the organization and capabilities of the law enforcement agencies, analysis on those matters, strategies being discussed by the authorities internally.

Public disclosure of such details of the proposed action would undermine the very purpose of the action, as it would allow interested parties to know in advance the action proposed to fight human trafficking and organised crime.

Disclosure of these details would compromise future initiatives on the ground in the field of law enforcement and providing full details on the strategies, approached, trainings, materials and equipment would make them more vulnerable to the very individuals and/or groups targeted by these initiatives. It is not possible to describe the withheld parts in more detail without jeopardising the public security, which is the very interest Article 4(1)(a), first indent of Regulation (EC) No 1049/2001 aims to protect.

2.3.4 Protection of public interest as regard international relations

- **Doc. 4.1.** Minutes of the 1st Steering Committee
- **Doc. 4.2** Minutes of the 2nd Steering Committee
- **Doc. 4.3** Minutes of the 3rd Steering Committee
- **Doc. 4.4** Minutes of the 4th Steering Committee
- **Doc. 6.** Template of MoU between INTERPOL and partner countries

Article 4(1)(a), third indent of Regulation (EC) No 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 (...) international relations’.

As far as the protection of international relations is concerned, the EU Court has acknowledged that the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest⁶.

After careful assessment, we have concluded that documents 4.1, 4.2, 4.3, 4.4 and 6, contain information that, if disclosed, would negatively affect the EU’s international relations with countries participating in the WAPIS programme.

The General Court has acknowledged in a recent judgment that the way in which the authorities of a third country perceive the decisions of the European Union is a component of the relations established with that third country⁷. The pursuit and the quality of those relations depend on that perception. Disclosure of the requested document could negatively affect that perception and undermine the relations with the partner countries, which are of paramount importance for the implementation of the envisaged action and for the EU’s interests in the area.

Therefore, disclosure of parts of the above mentioned documents would seriously undermine the protection of the public interest as regards international relations, in a reasonably foreseeable and non-hypothetical manner, pursuant to article 4(1)(a), third indent of Regulation (EC) No 1049/2001.

⁶ Judgment of the Court of First Instance of 25 April 2007, in case T-264/04, *WWF European Policy Programme v Council*, EU:T:2007:114, paragraph 40.

⁷ Judgment of the General Court of 27 February 2018, in case T-307/16, *CEE Bankwatch Network v. European Commission*, ECLI:EU:T:2018:97, paragraphs 89 –90.

In consequence, there is a real and non-hypothetical risk that public access to the above-mentioned information would undermine the implementing partner's commercial interests, including intellectual property, would harm the public interest as regards public security and international relations and constitute unauthorised disclosure of personal data against Article 4(1)(b) of Regulation (EC) No 1049/2001 and the provisions of Regulation (EU) 2018/1725.

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, we have considered the possibility of granting partial access to these documents. However, no meaningful partial access is possible without undermining the interests described above.

2.4. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(2) first indent of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

In your application, you do not put forward any reasoning pointing to an overriding public interest in disclosing the documents requested.

Nor have we been able to identify any public interest capable of overriding the interests protected by Article 4(2), first indent, of Regulation 1049/2001.

We conclude, therefore, that the protection of commercial interests prevails.

Please note also that Article 4(1)(a) and 4(1)(b) of Regulation 1049/2001 have an absolute character and do not include the possibility to demonstrate the existence of an overriding public 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 Bruxe
or by email to: 

Yours faithfully,

[Signed electronically]
Koen DOENS

Enclosures: List of documents