



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MIGRATION AND HOME  
AFFAIRS

The Director-General

Brussels, 23 June 2021

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

Luisa Izuzquiza  
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Dear Madam,

**Subject: Your application for access to documents – GESTDEM 2021/2118**

We refer to your e-mail dated 06 April 2021 in which you make a request for access to documents, registered on 08 April 2021 under the above mentioned reference number.

You request access to:

- *1. All documents generated or received by DG Home containing the aforementioned analysis regarding “compatibility with EC law”. This includes - but is not limited to - any legal advice and/or an analysis of the legality the Greek law on asylum of November 2019.*
- *2. All correspondence – including, but not limited to, letters, e-mails, and any attachments – exchanged between the European Commission and Greek authorities regarding, related to, or mentioning the above-mentioned Greek legislation on asylum.*
- *3. A list of all meetings held between the European Commission and Greek authorities regarding or in order to discuss the above-mentioned Greek legislation on asylum.*
- *4. And, finally, for all of these meetings: - all agendas; - a full list of attendees; - any record of these 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 DG Home 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).*

The following documents fall within the scope of your application:

- Document 1: Letter of Minister Mitarachi, Ministry of Migration and Asylum, to Monique Pariat, Director General, DG HOME, 02/06/2020 – ref. Ares(2020)3473520
- Document 2: Letter of Monique Pariat, Director General, DG HOME, to Minister Mitarachi, Minister of Migration and Asylum, 23/02/2021 – ref. Ares(2021)1422397
- Document 3: Letter of Commissioner Ylva Johansson to Ministers Mitarachi and Koumoutsakos, 29/04/2020 – ref. Ares(2020)2282777

- Document 4: Message of Monique Pariat, Director General, DG HOME, to Minister Mitarachi, Minister of Migration and Asylum, 05/05/2020 – ref. Ares(2021)4063491
- Document 5: Message of Monique Pariat, Director General, DG HOME, to Minister Mitarachi, Minister of Migration and Asylum, 18/05/2020 – ref. Ares(2021)4063683
- Document 6: Message of Minister Mitarachi, Minister of Migration and Asylum, to Monique Pariat, Director General, DG HOME, 19/05/2020 – ref. Ares(2021)4063758
- Document 7: Message of Monique Pariat, Director General, DG HOME, to Minister Mitarachi, Minister of Migration and Asylum, 29/05/2020 – ref. Ares(2021)4063843

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 and 3 may be partially disclosed.

Some parts of documents 1, 2 and 3 have been blanked out as their disclosure is prevented by exception to the right of access laid down in Article 4(1)(b) of this Regulation. The redacted parts of the documents are personal data, the disclosure of which 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.

However, after a concrete assessment of documents 4, 5, 6 and 7, I regret to inform you that they cannot be disclosed since they must be protected in accordance with the exceptions laid down in Article 4(2), second indent (“*protection of legal advice*”) and Article 4(2), first paragraph (“*protection of the decision-making process*”) of Regulation (EC) No 1049/2001, as explained below.

Documents 4, 5, 6 and 7 are correspondence between the Commission’s services and the Greek Authorities containing legal advices as part of ongoing discussions.

In this respect, the General Court has recognized in its judgment in Case T-755/14 that “*the concept of “legal advice” relates to the content of a document and not to its author or its addressees. [...] this is a question of advice relating to a legal issue, regardless of the way in which that advice is given. [...] it is irrelevant, for the purposes of applying the exception relating to the protection of legal advice, whether the document containing that advice was provided at an early, late or final stage of the decision-making process. In the same way, the fact of the advice having been given in a formal or informal context has no effect on the interpretation of that concept*”<sup>1</sup>.

Those documents are covered by the exception laid down in Article 4(2), second indent, of Regulation (EC) No 1049/2001<sup>2</sup>, which as recognized by the Court of Justice must be construed as aiming to protect an institution’s interest in seeking legal advice and receiving frank, objective and comprehensive advice<sup>3</sup>.

Disclosure of the legal opinions contained in documents 4 to 7 would make known legal advice provided on a draft law on asylum and migration, relating to a matter of sensitive nature. The legal

<sup>1</sup> Judgment of the General Court of 15 September 2016, Case T-755/14, *Herbert Smith Freehills LLP v Commission*, ECLI:EU:T:2016:482, paragraphs 47-53.

<sup>2</sup> “[T]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] – legal advice [...], unless there is an overriding public interest in disclosure”.

<sup>3</sup> Judgment of the Court of Justice of 1 July 2008, Joined Cases C-39/05 P and C-52/05 P, *Kingdom of Sweden and Maurizio Turco v Council of the European Union*, ECLI:EU:C:2008:374, paragraph 42.

issues treated in the legal advice provided in documents 4 to 7 are themselves highly sensitive. The legal advice given explored various aspects of the draft law such as detention, process for examining asylum applications, and grounds for certain decisions – all having an impact on the fundamental rights of applicants for international protection.

Disclosure of the documents requested would clearly have, in a foreseeable manner, a serious impact on the Commission's interest in seeking and receiving legal advice and on the Commission's services' capacity to assist the Commission in the assessment of sensitive legal questions, as regards migration and asylum law including the respect of fundamental rights. The frankness, objectivity and comprehensiveness as well as the expeditiousness of the legal advice would be seriously affected if legal advice on such sensitive subjects, as in the present case, would be disclosed, depriving thus the Commission of an essential element in the framework of its work.

On the basis of the above, I conclude that the documents requested must be protected under the exception relating to the protection of legal advice foreseen in Article 4(2), second indent of Regulation (EC) No 1049/2001 and cannot be disclosed.

Documents 4 to 7 are also covered by the exception laid down in Article 4(3), first paragraph, of Regulation (EC) No 1049/2001 which states 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”.

As already detailed above, documents 4 to 7 contain legal comments of a sensitive character on a draft law on asylum and migration. They were intended for internal use and were an important part of discussions with the Greek authorities at high level. Disclosure of documents 4 to 7 would be negatively affecting the public interest in the protection of the institution's decision-making process since it would deter the Commissions' services and, more particularly, DG HOME from making legal comments independently and without being unduly influenced by the prospect of public disclosure. It would also affect the Commission's margin of manoeuvre in taking positions in the ongoing assessment of the compatibility of Greek legislation with EU law, including launching an infringement procedure. All this would severely reduce the Commission's capacity to take decisions after frank and unbiased internal discussions free from external interferences, thus depriving it of essential elements in the process of adopting its final positions on sensitive issues.

Consequently, I conclude that documents 4 to 7 also covered by the exception provided for in Article 4(3), second paragraph, of Regulation (EC) No 1049/2001 and cannot be disclosed by DG HOME.

As laid down in Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting partial access to the requested documents. However, after careful examination, I have come to the conclusion that they are entirely covered by the invoked exceptions so that a partial disclosure cannot be granted without harming the protected interests.

The exceptions laid down in Article 4(2) and in Article 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure. I observe that you have not provided any arguments to support any pressing need for the public to obtain access to the documents. I have also examined whether there could be an overriding public interest in disclosure but I have not been able to identify such an interest.

I conclude, therefore, that access to documents 4, 5, 6 and 7 must be denied based on the exceptions laid down in Article 4(2) second indent (legal advice) and in Article 4(3) first paragraph (ongoing decision-making process) of Regulation (EC) No 1049/2001.

Finally, I regret to inform you that the Commission does not hold any documents that would correspond to the description given in your application under points 3 and 4.

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and 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.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

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 faithfully,

(e-signed)  
Monique PARIAT

Annexes: Documents 1, 2 and 3