

Reply of the European Commission to the proposal for a solution from the European Ombudsman on how the European Commission dealt with a request for public access to documents concerning surveillance and security systems and equipment at migrant centres in Greece - Complaint by M [REDACTED] ref. 507/2023/PVV

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

Through an initial application of 9 August 2022, registered under reference number GESTDEM 2022/4534 and attributed to the European Commission's Directorate-General for Migration and Home Affairs (hereafter 'DG HOME'), the applicant requested access to:

'For the period from September 2020 to date:

- All documents – including, but not limited to, briefings, notes, papers, non-papers, or reports – created or held by the Task Force Migration Management in DG Migration and Home Affairs (HOME) or exchanged between DG HOME representatives and any other actor (including, but not limited to, other European bodies' officials or Member State representatives) regarding, related to, or mentioning “Centaur” or other surveillance and security systems and equipment (...) at existing and forthcoming migrant reception facilities on Samos, Kos, Leros, Lesbos, and Chios islands in Greece;
- All correspondence – including, but not limited to, letters, e-mails, and any attachments – exchanged between Task Force Migration Management in DG Migration and Home Affairs (HOME) and any other actor (including, but not limited to, other European bodies' officials or Member State representatives) regarding, related to, or mentioning “Centaur” or other surveillance and security systems and equipment at existing and forthcoming migrant reception facilities on Samos, Kos, Leros, Lesbos, and Chios islands in Greece;
- A list of all meetings (including e-meetings) held between the Task Force Migration Management in DG Migration and Home Affairs (HOME) representatives and any other actor (including, but not limited to, other European bodies' officials or Member State representatives) where “Centaur” or other surveillance and security systems and equipment at existing and forthcoming migrant reception facilities on Samos, Kos, Leros, Lesbos, and Chios islands in Greece was discussed;
- All correspondence and documents regarding, related to, or mentioning Data Protection Impact Assessments (DPIAs) related to existing and forthcoming migrant reception facilities on Samos, Kos, Leros, Lesbos, and Chios islands in Greece’.

DG HOME identified 18 documents as falling under the scope of this request. In its initial reply of 18 October 2022, DG HOME refused access to the documents based on the exceptions laid down in the first indent (protection of the public interest as regards public security) of Article 4(1)(a) and the first indent (protection of commercial interests) of Article 4(2) of Regulation (EC) No 1049/2001.

In her confirmatory application, submitted on 31 October 2022 in accordance with Article 7(2) of Regulation (EC) No 1049/2001 and registered on 23 November 2022, the applicant requested a review of this position.

On 23 February 2023, the applicant filed a complaint with the European Ombudsman for the lack of reply to the confirmatory application.

On 15 November 2023, the Ombudsman proposed a solution, further detailed in the section below.

On 13 February 2024, the Commission adopted the final decision C(2024) 1057 on the confirmatory application. In the final decision, the Commission apologised for the delay in the handling of the application, which was caused by the need to assess additionally identified documents and to consult the Member State on the disclosure of the documents originating from that Member State. The detailed position of the Commission, as reflected in the confirmatory decision, will be explained below.

II. THE OMBUDSMAN'S INQUIRY AND PROPOSAL

In the course of the inquiry launched by the Ombudsman's office, the Ombudsman services reviewed a copy of the documents at issue in the complainant's confirmatory application as well as copies of additional documents that have been identified at the confirmatory stage; and the documentation relating to the third-party consultations carried out at the initial and confirmatory stages.

In its proposal for a solution of 15 November 2023, the Ombudsman pointed out that the Commission, when consulting the Member State in accordance with Article 4(5) of Regulation (EC) No 1049/2001, should verify whether the Greek authorities gave proper reasons to object to the disclosure of these documents to protect public security and commercial interests.

After inspection of the eighteen documents concerned, the Ombudsman considers that the documents can be classified in two categories:

1. Documents related to the Data Protection Impact Assessments (DPIAs) and the Fundamental Rights Impact Assessment (FRIA)
2. Documents that appear to be public or appear to contain information that is public.

As regards the first category of documents, the Ombudsman referred to its inquiry into how the Commission ensures respect for fundamental rights in EU funded migration management facilities in Greece¹. In its suggestions for improvements made in relation to that inquiry, the Ombudsman considered that 'the Commission should urge the Greek authorities to publish their fundamental rights impact assessment and personal data impact assessment of the surveillance system in the MPRICs. The Commission should include a link to that publication on its own website.'

On 29 August 2023, the Commission replied to this suggestion that it 'will suggest to the Greek authorities to publish the aforementioned assessments and include a link to the publication on its website following their publication.'

Furthermore, the Ombudsman stated that '[g]ranting access to the abovementioned documents would thus be in line with the Ombudsman's view on proactive transparency regarding

¹ OI/3/2022/MHZ available at <https://www.ombudsman.europa.eu/en/case/en/62000>.

surveillance and security systems in the MPRICs, and with the Commission's commitment to suggest to the Greek authorities to embrace such transparency'.

As regards the second category of documents, the Ombudsman stated that the review of the documents at issue also revealed that several of the documents identified appear to be public or appear to contain information that is public.

In light of the above, the Ombudsman proposed that the Commission 'reconsider its decision on this public access request, with a view to disclosing the documents concerned to the widest extent possible.'

III. THE REPLY OF THE COMMISSION TO THE OMBUDSMAN'S PROPOSAL FOR A SOLUTION

Further to the submission of the applicant's confirmatory application, the Commission carried out a renewed search for the documents requested. The Commission's Secretariat-General conducted a review of the refusal to give access to the 18 documents and additionally identified two documents (documents 19 and 20) as falling under the scope of the applicant's request.

As most of the requested documents originate from the Greek authorities, in accordance with Article 4(4) and (5) of Regulation (EC) No 1049/2001, the Secretariat-General launched consultations with the Greek authorities as to the possible disclosure of documents originating from them. Following several exchanges, the Greek authorities confirmed that they agreed with the disclosure of 16 documents provided that personal data are redacted in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001. As regards two documents, since the Commission services did not receive a reply from the Greek authorities regarding their possible disclosure, it understood the lack of reply as a tacit agreement.

With regard to the two e-mail exchanges newly identified at confirmatory stage, the Greek authorities requested the redaction of limited parts of those documents based on the exception laid down in Article 4(1)(a) (protection of public security) of Regulation (EC) No 1049/2001. The Greek authorities argued that the redacted parts concern the development and progress of the Hyperion project and the functionalities as well as equipment installation locations in relation to Centaur project.

Following the review performed at the confirmatory stage, and taking into account the replies of the Member State concerned, the Commission adopted its confirmatory decision (C(2024) 1057).

The confirmatory decision, of which the Ombudsman has received a copy:

- granted full access to nine documents;
- granted wide partial access to nine documents except for some parts which were redacted based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001;
- taking into account the reply of the Greek authorities, granted wide partial access to the two documents identified at confirmatory stage, with the exception of some parts

which were redacted based on the exceptions laid down in the first indent (protection of the public interest as regards public security) of Article 4(1)(a) and Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

As acknowledged by the Ombudsman in its proposal for a solution of 15 November 2023, the settled case-law confirms that the Commission does not have to carry out an exhaustive, specific and individual assessment of the Member State's decision to object by conducting a review going beyond the verification of the mere existence of reasons referring to the exceptions in Article 4(1) to (3) of Regulation (EC) No 1049/2001, and whether they appear to be *prima facie* well-founded².

Following an assessment at first sight of the reply provided by the Greek authorities, the Commission concluded that the Greek authorities have based their substantive opposition to disclosure of certain parts of the requested documents on the exceptions laid down in the first indent (protection of the public interest as regards public security) of Article 4(1)(a) of Regulation (EC) No 1049/2001.

The Commission considered that the Greek authorities have given proper reasons in support of their position based on the protection of the public interest as regards public security.

Therefore, the Commission submits that, as explained by the confirmatory decision, the considerations presented by the Greek authorities in this case appear *prima facie* to be well founded and thus justify the refusal to disclose limited parts of two email exchanges based on the exception protecting the public security.

As regards the suggestion made by the Ombudsman in its inquiry into how the Commission ensures respect for fundamental rights in EU funded migration management facilities in Greece (OI/3/2022/MHZ), the Commission has suggested to the Greek authorities to publish the aforementioned assessments and include a link to the publication on its website following their publication. The Commission notes that, in the present case, access was granted to all documents related to the Data Protection Impact Assessments (DPIAs) and the Fundamental Rights Impact Assessment (FRIA).

² Judgments of the General Court of 8 February 2018, *Pagkyprios Organismos Ageladotrofon v Commission*, T-74/16, EU:T:2018:75, paragraph 57; and of 15 February 2023, *Asesores Comunitarios, SL v European Commission*, T-77/22, EU:T:2023:69, paragraph 38.

IV. CONCLUSIONS

The Commission is of the view that the refusal of access to limited parts of two of the documents is justified and that the widest possible access has been granted to the documents requested, including the additional documents identified at the confirmatory stage.

For the Commission

Věra JOUROVÁ

Vice-President

