

Reply by the European Commission to the European Ombudsman's proposal for a solution in the case on the failure by the European Commission to take a final decision within the applicable time limit on a request for public access to documents concerning an EU funded project to improve migration management in Libya [reference EASE 2022/4242]

- Complaint by [REDACTED], reference 1018/2023/NH

I. BACKGROUND

The complainant submitted a request for public access to documents concerning the EU Trust Fund for Africa and the project “Support to Integrated Border and Migration Management in Libya”, implemented by the Italian Ministry of Interior¹. The complainant requested the following information in relation to the project:

- 1) ‘Indication of the amount of the sum deployed and the sum not yet deployed as at 15.07.2022.
- 2) Beneficiary authorities of the approved projects.
- 3) Actions implemented (or to be implemented) to achieve the objectives defined in the Action Fiche.
- 4) Expenditure decrees issued by the Italian Ministry of the Interior in relation to the approved actions’.

After a clarification request, the applicant confirmed that the request covered both phase one and phase two of the project, namely ‘T05-EUTF-NOA-LY-04’ and ‘T05-EUTF-NOA-LY-07’.

In its initial reply of 7 November 2022, the Directorate-General for Neighbourhood and Enlargement Negotiations confirmed, as regards point 4 of the application (‘[e]xpenditure decrees issued by the Italian Ministry of the Interior in relation to the approved actions’), that the Commission does not hold any relevant documents.

As regards points 1 to 3 of the request (‘Actions implemented (or to be implemented) to achieve the objectives defined in the Action Fiche’ and ‘Expenditure decrees issued by the Italian Ministry of the Interior in relation to the approved actions’), the Directorate-General for Neighbourhood and Enlargement Negotiations identified 59 documents and consulted the Italian authorities and the International Organization for Migration (IOM) on the possible disclosure of the documents originating from them. Following the response of the Italian authorities and the International Organization for Migration, the Directorate-General for Neighbourhood and Enlargement Negotiations: 1) protected the content of 55 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), the third indent (protection of the public interest as regards international relations) of Article 4(1)(a) and Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001, and 2) granted partial

¹ The request was registered with reference EASE 2022/4242.

access to four documents subject to the redaction of personal data in accordance with Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001.

On 21 November 2022, the complainant lodged a confirmatory application against that reply and, on 6 June 2023, a complaint to the European Ombudsman due to the lack of a final decision.

II. EUROPEAN OMBUDSMAN'S INQUIRY AND PROPOSAL FOR A SOLUTION

The Ombudsman opened an inquiry into the lack of a timely confirmatory decision. Upon request of the Ombudsman, the Commission provided a copy of the documents concerned.

Following the inspection, the Ombudsman proposed that the Commission grant the widest possible access to the documents with information on how the project was financed. As regards the documents concerned, the Ombudsman proposed to:

- grant the widest possible access to nine documents consisting of transmission notes or cover letters;
- grant partial access to financial reports, in particular to the main budget lines for actual expenditure, while accepting the redaction of sensitive details contained in the breakdown of costs;
- grant wide partial access to accounting documents, with the exception of personal data;
- grant partial access to the total amount spent on the 'equipment component of the project, the total foreseen amount and the amount spent on training in the document identified as 'document 6' ('Programme Update – February 2022 for the SIBMMIL project');
- grant partial access to document 9 ('Inception phase provisional report – 25/11/2021'), in particular to the parts of the document that are descriptive in nature, notably the introduction, general overview of the context in South Libya, and the draft budget;
- grant wide partial access to document 49 ('Addendum Phase II') with the exception of the personal data.

The Ombudsman seemed to agree with the protection of the narrative reports based on the exceptions laid down in the first and the third indents of Article 4(1)(a), and Article 4(1)(b) of Regulation (EC) No 1049/2001, protecting respectively public security, international relations and privacy and integrity of the individual.

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

The Commission's confirmatory decision C(2024)4507², of which the Ombudsman has received a copy:

- confirms the initial decision of the Directorate-General for Neighbourhood and Enlargement Negotiations to grant partial access to cover letters (documents 5, 8, 11 and 12) subject only to the redaction of personal data in accordance with Article 4(1)(b) (protection of the privacy and integrity of the individual) of Regulation (EC) No 1049/2001;
- as regards one document ('Addendum Phase II'), the remaining cover letters (documents 2, 14, 22, 25, 29, 30, 42, 44, 46), and accounting documents (namely documents 50, 52, 53, 55, 58 and 59), it grants partial access subject only to the redaction of personal data in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001;
- as regards the remaining accounting documents (documents 45, 51, 54, 56 and 57), it grants partial access based on Article 4(1)(b) (protection of privacy and the integrity of the individual) and the first indent (protection of commercial interests) of Article 4(2) of Regulation (EC) No 1049/2001;
- as regards other documents (programme update (document 6), assessment inception report (document 9)) and financial reports (documents 16, 17, 23, 27, 38, 39 and 48), it grants partial access based the exceptions laid down in the first indent (protection of the public interest as regards public security) of Article 4(1)(a) and the third indent (protection of the public interest as regards international relations) of Article 4(1)(a) of Regulation (EC) No 1049/2001;
- as regards a letter from the Italian authorities to the Commission (document 19), it grants partial access based on the exceptions laid down in Article 4(1)(b) (protection of privacy and the integrity of the individual), the first indent (protection of the public interest as regards public security) of Article 4(1)(a), and the third indent (protection of the public interest as regards international relations) of Article 4(1)(a) of Regulation (EC) No 1049/2001;
- it protects an action plan (document 26) pursuant to the first indent (protection of the public interest as regards public security) and the third indent (protection of the public interest as regards international relations) of Article 4(1)(a) of Regulation (EC) No 1049/2001;

² The confirmatory decision C(2024)4507 was sent to the complainant on 24 June 2024.

- it protects the quarterly narrative information notes and interim narrative reports (documents 1, 3, 4, 7, 10, 13, 15, 18, 20, 21, 24, 28, 31, 32, 33, 34, 35, 36, 37, 40, 41, 43 and 47) based on the first indent (protection of the public interest as regards public security) and the third indent (protection of the public interest as regards international relations) 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.

The Commission refers to the detailed analysis of the confirmatory decision C(2024)4507, which sets out the final position of the Commission in relation to the complainant's request. In reaching its final position, the Commission took duly into account the circumstances of the case, the applicable case-law and the reply of the Italian authorities.

The Commission notes that information such as the total amount spent on the 'equipment component' of the project, the total foreseen amount of EUR 16.660.000, and the amount spent on training (EUR 3.672.000) have been disclosed as per the confirmatory decision. Likewise, the Commission has granted access to the cover letters with only personal data redacted, and to the main budget lines of actual expenditure in the programme concerned ('Support to Integrated border and migration management in Libya'). Moreover, it has granted access to general information about the political and security context in the South of Libya and the overview of the project, reflected respectively in pages 4-7 and 11-15 of document 9.

On the other hand, the Commission is of the view that the bank account details of the Italian administration must be protected as its disclosure could undermine the integrity of the financial transactions and the entity concerned. The narrative reports (documents 3, 4, 7, 10, 13, 15, 18, 20, 21, 24, 28, 31, 32, 33, 34, 35, 36, 37, 40, 41, 43 and 47) cannot be disclosed in accordance with the first indent (protection of the public interest as regards public security) and the third indent (protection of the public interest as regards international relations) 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 for the reasons set out in the confirmatory decision.

Consequently, the Commission considers that it has reconsidered its initial position on the complainant's request and, following its review, it has granted the widest possible access to the documents, notably to documents containing financial information.

The Commission remains available to engage further with the Ombudsman if the latter deems it necessary in the context of this complaint.

For the Commission
Valdis DOMBROVSKIS
Executive Vice-President

