



Valletta Harbour, 10 March 2023  
EUAA/ED/2023/078

Ms Loredana Leo  
Sent by email to: [inlimineasgi@mypec.eu](mailto:inlimineasgi@mypec.eu)

**Subject: Your application for access to EUAA documents (No 000976)**

Dear Ms Leo,

Reference is made to your correspondence dated 5 December 2022 (registered on 11 January 2023) in which you submitted to the European Union Agency for Asylum ('EUAA') a request for access to

"[...] *administrative documents issued in relation to:*

- 1. Standard Operating Procedures that structure the performance of redistribution procedures;*
- 2. Information document prepared by EUAA in order to provide the asylum seeker with information on the relocation procedure;*
- 3. If minutes are drawn up (of which a copy is requested) and, where appropriate, a copy to the foreign national of the interview with the delegation of the EU country involved;*
- 4. If, in the event of refusal of the EU country concerned, documentation is issued proving such refusal and if there are, in that case, forms of appeal against that refusal?"*

Please be informed that your request (No 000976) has been treated as an application for public access to documents falling under the provisions of Regulation (EC) No 1049/2001<sup>1</sup>, in accordance with Management Board Decision No 6 of 20 September 2011<sup>2</sup>.

Having carefully examined your application and after having consulted the relevant internal and external entities, please find below the Agency's response thereto.

**I. RELEVANT DOCUMENTS IDENTIFIED**

Being highly committed to the principle of good administration in general, as well as in the context of its communication with the public, the EUAA's services have carried out thorough and diligent administrative efforts in order to identify any relevant documentation.

As a result, the Agency has identified the following six documents falling under the scope of your application:

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<sup>1</sup> 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, (OJ L 145, 31.5.2001, p. 43).

<sup>2</sup> Management Board Decision No 6 of 20 September 2011 laying down practical arrangements to the documents of the European Asylum Support Office (EASO).





- 1) 'VR Info Provision - Key messages for Lampedusa';
- 2) 'VR Info Provision Lodging';
- 3) 'VR Info Provision pre-lodging - adapted for handout - flip on long edge & landscape';
- 4) 'VR Info Provision pre-lodging – PDF';
- 5) 'VR Info Provision pre-lodging - PPT not animated';
- 6) 'Workflow for voluntary relocation in application of the new Voluntary Solidarity Mechanism developed on the basis of the new Voluntary Solidarity Declaration agreed on 22 June 2022 - Version of 18 July 2022' (hereinafter the 'Relocation SOP').

Pursuant to Article 4(4) of Regulation (EC) No 1049/2001, as regards third-party documents, the Agency shall consult the third party concerned with a view to assessing whether an exception in paragraph 1 or 2 of the above-mentioned Article is applicable, unless it is clear that the document shall or shall not be disclosed.

In light of the above, the EUAA has consulted the European Commission as regards the potential disclosure of the Relocation SOP. In turn, the European Commission has (on behalf of the Agency) further consulted other external stakeholders who were involved in its development - i.e. the EU Member States and International Organization for Migration (IOM). As a result, some of these external stakeholders have expressed their clear objections against disclosure of the Relocation SOP.

## II. INDIVIDUAL ASSESSMENT OF THE IDENTIFIED DOCUMENTS

The EUAA is highly committed to the principle of transparency and the rights of individuals to access documents of EU institutions, bodies and agencies as laid down in both Article 15 of the TFEU and Article 42 of the Charter of Fundamental Rights of the EU.

Therefore, the Agency is very pleased to inform you that you may find **documents 1) to 5)** enclosed with this present letter in an unredacted manner.

Pursuant to the EUAA's own assessment under Regulation (EC) No 1049/2001, multiple exceptions under Article 4 of Regulation (EC) No 1049/2001 do need to be taken into consideration however with regard to the Relocation SOP - relating to:

- a) The protection of public security

Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 provides that the institutions **shall** refuse access to a document where its disclosure would undermine the protection of public security.



The Relocation SOP contains various types of sensitive operational information providing detailed non-public insights into the manner in which participating Member States cooperate in the context of the voluntary relocation mechanism, as well as into the procedures, tools and criteria used by those Member States in the implementation of the mechanism.

The public disclosure of the Relocation SOP would therefore seriously hamper the implementation of the voluntary relocation mechanism, as it would entail that the relevant stakeholders (European Commission, EUAA, IOM and EU Member States) would no longer be in a position to fully exchange information with each other in a cooperative spirit, free from undue external pressure. For this reason, the public disclosure of the Relocation SOP would also have a seriously negative effect on the existing mutual trust between the EUAA and other stakeholders involved in the implementation of the voluntary relocation mechanism. Ultimately, such disclosure would therefore hamper the implementation of the Common European Asylum System (CEAS) and, in turn, public security.

Therefore, access to the Relocation SOP must be refused as per Article 4(1)(a), first indent of Regulation (EC) No 1049/2001.

In this sense, the Agency also recalls that well-established Union case law provides that *“the principle of strict interpretation of the exceptions set out in Article 4 of Regulation (EC) No 1049/2001 does not, in respect of the public interest exceptions provided for in Article 4(1)(a), preclude **the institution concerned from enjoying a wide discretion** for the purpose of determining whether disclosure of a document to the public would undermine the interests protected by that provision”*<sup>3</sup>.

b) The protection of the decision-making process

According to Article 4(3), first subparagraph of Regulation (EC) No 1049/2001, access 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.

The Relocation SOP aims to develop standard workflows following the Solidarity Declaration agreed upon on 22 June 2022 providing for a voluntary solidarity contribution mechanism (in the form of relocation of other types of contributions)<sup>4</sup>.

However, it should be emphasised that this document has been marked ‘Internal Working Document’. The reason therefore being that the present version of the Relocation SOP is not definitive in nature. Namely, the implementation of the present version of the Relocation SOP should rather be regarded as a pilot project, following which the afore-mentioned stakeholders involved should be in a position to adopt a finalised version thereof. In this context therefore, the decision-making process in relation to the Relocation SOP should not be regarded as having been completed but is, on the contrary, ongoing.

<sup>3</sup> *ClientEarth vs European Commission, Case T-644/16, 11 July 2018.*

<sup>4</sup> <https://www.consilium.europa.eu/en/press/press-releases/2022/06/22/migration-and-asylum-pact-council-adopts-negotiating-mandates-on-the-eurodac-and-screening-regulations/>



In the EUAA's assessment therefore, the public disclosure of the current version of the Relocation SOP at this stage would actually, specifically and seriously affect the decision-making process at hand, which moreover takes place in a particularly sensitive context. Namely, there would be a foreseeable risk that disclosing the present version of the Relocation SOP would be damaging to the good cooperation between all stakeholders and impair the "space to think" which is necessary in the ongoing decision-making processes. This could moreover lead to a loss of mutual trust between stakeholders.

Finally, the disclosure of the Relocation SOP would most probably lead to increased public pressure and lobbying on the stakeholders involved in the adoption process of the final version of the Relocation SOP. This in turn would make the adoption of a (delicate) common position even considerably more difficult than it already is.

The EUAA further examined whether an overriding public interest exists which would nonetheless warrant the disclosure of the Relocation SOP. In this sense, it has concluded there is no such an overriding public interest. Namely, although there may indeed be a public interest in the voluntary relocation mechanism, this does not outweigh the interest of the stakeholders concerned in protecting their ongoing decision-making process.

Therefore, access to the Relocation SOP must also be refused pursuant to Article 4(3) of Regulation (EC) No 1049/2001, based on the protection of the decision-making process.

### **III. PARTIAL ACCESS**

In accordance with the principle of proportionality<sup>5</sup>, the Agency further examined whether partial access could be granted to the Relocation SOP.

However, the EUAA is firstly of the view that the afore-mentioned exceptions laid down in Article 4 of Regulation (EC) No 1049/2001 apply to the entire contents thereof. Secondly, the relevant case law provides that there is no obligation to grant partial access in case the remaining parts of the document would be meaningless and/or the administrative burden of blanking out the parts covered by exceptions would be excessive<sup>6</sup>.

In light of the above considerations, the Agency does not consider it possible nor reasonably required to grant partial access to the Relocation SOP.

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<sup>5</sup> *Hautala v Council, Case T-14/98, 19 July 1999.*

<sup>6</sup> *Judgment of the Court of first Instance of 7 February 2002 in case T-211/00, Kuijter v Council, & Judgment of the General Court of 20 March 2014 in case T-181/10, Reagens v Commission.*



#### IV. CONCLUDING OBSERVATIONS

The EUAA is highly committed to upholding the principles of transparency and good administration. As such, please be assured that our services have tried their utmost to accommodate your present application for public access to documents.

I trust you will find the multiple enclosed documents useful. However, as regards the non-disclosure of the Relocation SOP, please note that the Agency is not in a position to provide access to documents, which, if made public, would jeopardize the protection of public security and the decision-making process of EU institutions. Finally, I thank you for your interest in the EUAA.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, within 15 working days of the receipt of this letter, you may submit a confirmatory application to the EUAA asking it to reconsider its position. Pursuant to Article 8 of Regulation (EC) No 1049/2001, the EUAA will reply to you within 15 working days from registration of such an application. You can submit a confirmatory application via the following methods:

**By post:**

The Executive Director  
European Union Agency for Asylum (EUAA)  
MTC Block A  
Winemakers Wharf  
Grand Harbour Valletta, MRS 1917  
Malta

**By electronic mail:** [pad.mailbox@euaa.europa.eu](mailto:pad.mailbox@euaa.europa.eu)

Yours sincerely,

Nina Gregori  
Executive Director

**Attachments:**

- 'VR Info Provision - Key messages for Lampedusa';
- 'VR Info Provision Lodging';
- 'VR Info Provision pre-lodging - adapted for handout - flip on long edge & landscape';
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