

EUROPEAN EXTERNAL ACTION SERVICE



DG Budget and Administration  
The Director-General

Brussels, **09 MARS 2020**  
eeas.sg.affgen.2 (2020) 177097

**Privacy International**

[REDACTED]  
[REDACTED]  
[REDACTED]@privacyinternational.org

[REDACTED]  
[REDACTED]  
[REDACTED]@privacyinternational.org

*e-mail only*

*Subject: Your request for access to documents  
Our ref: 2019/150*

Dear [REDACTED]

Thank you for your letter dated 31/12/2019, in which you informed us of your wish to submit a confirmatory application following your initial request for access to documents.

I have therefore carefully studied your initial request, dated 23/9/2019, as well as the EEAS' reply 2019/150 which was sent to you on 13/12/2019. You initially requested documents including the information about transfer of personal data that would be processed in the context of surveillance, police, migration, biometric databases mentioned in the point 1 of your request. Direct or indirect transfer of surveillance, cyber-surveillance, policing or border control equipment to third countries mentioned in the point 2 of your request. Trainings mentioned in the point 3 of your request that would mainly include the use of the above mentioned technologies or any related investigative techniques. Financing related to the activities mentioned in the point 4 of your request.

In your confirmatory application, which we have received on 31/12/2019, you reiterated your request regarding the documents mentioned above.

Following your confirmatory request, relevant EEAS Divisions had been contacted and asked to search for the documents stored in their filing system, based on the description in your request.

After a search the EEAS has identified the following documents matching your request, as referenced hereafter:

1. **Operational Guidelines on Public Order;**
2. **Operational Guidelines on Border Management;**
3. **Operational Guidelines on Maritime Security;**
4. **Operational Guidelines on Legislative Drafting;**
5. **Operational Guidelines on Gender Mainstreaming;**
6. **Memorandum of Understanding between the European Union Border Assistance Mission in Libya (EUBAM Libya) and International Centre for Migration Policy Development (ICMPD);**
7. **Terms of Reference for Joint Frontex-Italy-EUBAM Pilot Training Action in support of the Libyan General Administration for Coastal Security (GACS);**
8. **Training Programme for the Libyan General Administration for Coastal Security;**
9. **Summary of discussion on the evaluation of the Joint Pilot Project on 30 May 2019;**
- 10-12. **EUAM Ukraine Mission Six-monthly Report: October 2016 – March 2017, April 2017- September 2017, October 2018 – March 2019;**
- 13-14. **EUAM Ukraine Mission Intermediate Report: October 2018 – December 2018, April 2019 – June 2019;**
- 15-16. **EULEX Kosovo Mission Six-monthly Report May 2017- October 2017, May 2019 – November 2019;**
- 17-22. **EUCAP Somalia Mission Six-monthly Report: October 2016 - March 2017, April 2017- September 2017, October 2017- March 2018, January 2019 - June 2019, April 2018-December 2018, July 2019-31 December 2019;**
- 23-25. **EUCAP Somalia Mission Intermediate Report: 1 January 2018-31 March 2018, 1 July 2018-30 September 2018, 1 January 2019-31 March 2019;**
- 26-30. **EUCAP Sahel Niger Mission Six-monthly Report: January 2017- July 2017, July 2017- January 2018, February 2018- August 2018, August 2018- February 2019, February 2019 - August 2019;**
- 31-32. **EUCAP Sahel Niger Mission Intermediate Report: February 2018 - May 2018, August 2019- November 2019;**
- 33-37. **EUCAP Sahel Mali Mission Six-monthly Report: January 2017- July 2017, July 2017- February 2018, February 2018- August 2018, August 2018- February 2019, February 2019 - August 2019;**
- 38-41. **EUCAP Sahel Mali Mission Intermediate Report: August 2018 - May 2019, August 2018- November 2019, February 2019- May 2019, August 2019- November 2019**
- 42-46. **EUBAM Rafah Mission Six-monthly Report: June 2017- November 2017, December 2017- May 2018, December 2018- May 2019, June 2019 - November 2019, December 2017- February 2018;**
- 47-49. **EUBAM Rafah Mission Intermediate Report: June 2018- August 2018, December 2018- February 2019, June 2019- August 2019;**

- 50-53. EUBAM Libya Mission Six-monthly Report: January 2017- July 2017, July 2017 - February 2018, August 2018 - February 2019, February 2019 - August 2019;**
- 54-56. EUBAM Libya Mission Intermediate Report: August 2018- November 2019; February 2019- May 2019; August 2019- November 2019;**
- 57-60. EUAM Iraq Mission Six-monthly Report: October 2017 – April 2018, April 2018 - October 2018, October 2018 – April 2019, April 2018 – October 2019;**
- 61-63. EUAM Iraq Mission Intermediate Report: October 2017 – January 2018, April 2018 – July 2018, April 2019 – July 2019;**

Following our examination of the documents above I am pleased to forward to you the documents 1-5 in attachment to this letter. I take this opportunity to remind you that the documents provided may not be copied or reproduced for commercial purposes without prior consultation with the EEAS.

Concerning documents 6-8 the EEAS draws the following conclusion:

**6. Memorandum of Understanding between the European Union Border Assistance Mission in Libya and International Centre for Migration Policy Development**

The Memorandum of Understanding contains provision on mutual support and cooperation between EUBAM Libya and ICMPD in the fields of common interest.

Following a third party consultation with ICMPD and EUBAM Libya in accordance with Article 4(4) of the Regulation, I am pleased to forward to you the partially disclosed document in attachment to this letter.

The EEAS has decided not to disclose information with regard to payments (page 4) and the Annex A on General Terms and Conditions for the use of EUBAM Libya Charter Flights, Security Services and Accommodation.

Having regard to the fact that EUBAM Libya has to operate in a very delicate political and security environment, both at the local and international levels and the fact that the above-mentioned parts of the documents contain key and sensitive information regarding data and assessments of EUBAM Libya capacities, the disclosure of those parts of the document would undermine the security of the Mission and its staff as well as the EU's international relations, pursuant to Article 4(1)(a), first and third indents, of the Regulation. The full disclosure of the document would also jeopardise future operations of EUBAM Libya in the field.

- 7. Terms of Reference for Joint Frontex-Italy-EUBAM Pilot Training Action in support of the Libyan General Administration for Coastal Security (GACS);**
- 8. Training Programme for the Libyan General Administration for Coastal Security;**

I am glad to inform you that the document 7 and 8 can also be partially disclosed.

The non-disclosed parts contain personal data, such as the names of individuals. The disclosure would undermine the protection of privacy and the integrity of concerned persons, in particular in accordance with European Union legislation regarding the protection of

personal data. Therefore these personal data have been redacted pursuant to Article 4(1)(b) of the Regulation.

I take this opportunity to remind you that the document provided may be reused provided that the source is acknowledged and that you do not distort the original meaning or message of the document.

Please note that the EEAS does not assume liability stemming from the reuse. In case of doubt on reuse please do contact the EEAS for prior authorization.

## **9. Summary of discussion on the evaluation of the Joint Pilot Project on 30 May 2019**

As for document 9, it contains analyses and subjective assessments of the internal situation in third countries with explicit references to existing strengths and vulnerabilities. Effective cooperation or engagement with third countries is crucial for Frontex and Member States, and therefore a unilateral disclosure of this document must be refused in order to protect the mutual trust in the context of international relations. The release of the document would seriously affect the mutual trust enjoyed between these countries, Frontex and the EU Member States. Once the relationship of trust between Frontex, the EU Member States and the third countries concerned is broken these countries would no longer share sensitive data with Frontex and the Member States. This would not only impede the improvement of mechanisms necessary to analyse the migratory flows towards the European Union but also hinder the development of adequate tools at both European Union and national levels, that are necessary to conduct efficient border control and to prevent cross-border crime, such as the facilitation of irregular immigration, trafficking in human beings and terrorism. Therefore disclosing this information would undermine the protection of the public interest as regards public security and international relations. Consequently, access to this document has to be refused pursuant to Article 4(1)(a), first and third indents of the Regulation.

Furthermore, public disclosure of the document would seriously undermine the internal decision-making processes regarding current and future activities of Frontex and Member States. The ongoing discussions taking place within Frontex and under its auspices among further stakeholders require careful protection as disclosing the redacted parts would reveal negotiation positions of the different parties, which would erode the mutual trust among all participants. Such information would enable adverse actors to explore inside information and potential weaknesses and thus hamper ongoing and future negotiations as well as have negative impact on the European policy-making on civilian crisis management missions, as per Article 4(1)(a), first indent of the Regulation (EC) No 1049/2001 and Article 4(3) 2<sup>nd</sup> subparagraph of the Regulation.

## **10. Documents from 10 to 63, Six-monthly Reports and Intermediate Reports of EUAM Ukraine Mission, of EULAX Kosovo Mission, of EUCAP Somalia Mission, of EUCAP Sahel Niger Mission, of EUCAP Sahel Mali Mission, of EUBAM Rafah Mission, of EUBAM Libya Mission and of EUAM Iraq Mission**

Concerning documents listed from 10 to 63, we have identified those document as containing information about transfer/donation of police and/or border control equipment to third countries

(point 2 of your request) and about negotiation/promotion/abolition/adoption of any laws or frameworks related to that equipment (point 5 of your request).

The documents mentioned in these points are EEAS working documents addressed to EU Member States. All of them are classified as "EU Restreint".

Our examination concluded that these documents contain key and sensitive information regarding local authorities of the host countries where those Missions operate in the fields of their mandate, including data and assessments of the capacities of the host country. The information is relevant for the conduct of the Missions.

Despite the fact that the Missions themselves are civilian in nature, because of their association with law enforcement, their mandate also requires engagement with military and defence actors in the host country.

Considering the above and having regard to the fact that these Missions have to operate in a very delicate political and security environment, both at the local and international levels, the EEAS considers that a disclosure to the public of the information contained in the documents would undermine the protection of public security, defence and military matters, as well as the European policy-making on civilian crisis management missions.

Moreover, the public disclosure would seriously undermine the EEAS' internal decision-making process in relations to the conduct and management of the EU civilian crisis management missions. It would thus jeopardise the future operations of EUAM Ukraine Mission, of EULEX Kosovo Mission, of EUCAP Somalia Mission, of EUCAP Sahel Niger Mission, of EUCAP Sahel Mali Mission, of EUBAM Rafah Mission, of EUBAM Libya Mission and of EUAM Iraq Mission, as well as break the trust of our partners in the host countries. These reports contain data related to Mission Security, the confidentiality of which is to be ensured as an important part of the CivOpsCdr's duty of care for the Missions' staff.

Therefore, I regret to inform you that we are not in a position to disclose the documents from 10 to 63, neither as a whole nor partially, since this could risk undermining a) the protection of public security, b) defence and military matters and c) international relations as per 4(1)(a)1st, 2nd and 3rd indents, as well as d) protection of the Union's decision making process as per Article 4(3) 2<sup>nd</sup> subparagraph of the Regulation 1049/2001.

I hope this information will clarify your concerns and satisfy your request. Please note that my reply was based on the information provided in your letter. Should you consider that the subject matters covered by the documents identified by my services are fundamentally different to that of your interest, you are invited to submit a new request further specifying the documents.

You have a right, in accordance with Article 8 of the Regulation, to institute court proceedings against the European External Action Service and/or make a complaint to the Ombudsman, under the conditions laid down in Articles 263 and 228 of the Treaty of the Functioning of the EU respectively.

Yours sincerely,

