



EUROPEAN COMMISSION

Brussels, 3.12.2025
C(2025) 8553 final

Mr Emilio De Capitani

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 – EASE 2025/0289**

Dear Mr De Capitani,

I refer to your e-mail of 19 May 2025, registered on the same day, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter ‘Regulation (EC) No 1049/2001’), requesting a review of the initial reply to your application EASE 2025/0289.

**1. PLEASE ACCEPT OUR APOLOGIES FOR NOT REPLYING TO YOUR INITIAL REQUEST
WITHIN THE TIME-LIMIT OF 28 FEBRUARY 2025.SCOPE OF YOUR REQUEST**

In your initial application of 17 January 2025, registered on the same day, you requested access to ‘the National Implementation Plans foreseen by the EU Common Implementation Plan (COM(2024) 251) of the EU Pact on Asylum and Migration’.

The Secretariat-General identified the following documents as falling under the scope of your request:

1. Austria: Bundesministerium für Inneres – Europäischer Asyl- und Migrationspakt – Nationaler Implementierungsplan Österreich (ref. Ares(2025)191305);
2. Belgium: Belgium National Implementation Plan – Pact on Migration and Asylum (ref. Ares(2024)8931567);

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L 145, 31.5.2001, p. 43.

3. Bulgaria: ПЛАН ЗА ИЗПЪЛНЕНИЕ В РЕПУБЛИКА БЪЛГАРИЯ НА ПАКТА НА ЕС ЗА МИГРАЦИЯ И УБЕЖИЩЕ 12 декември 2024 г. - 12 юни 2026 г (ref. Ares(2024)9128332);
4. Croatia: Nacionalni plan provedbe Pakta o migracijama i azilu u Republici Hrvatskoj (ref. Ares(2025)2789492);
5. Cyprus: Implementation of the Pact on Migration and Asylum - National Implementation Plan Cyprus (ref. Ares(2024)8909939);
6. Czech Republic: Czech Ministry of Interior, The Czech National Implementation Plan for the Pact on Migration and Asylum, December 2024 (ref. Ares(2024)8949820);
7. Denmark: Danmarks nationale gennemførelsesplan for EU's migrations- og asylpagt (ref. Ares(2024)9103429);
8. Estonia: National Implementation Plan of the European Union International Protection and Migration Management System Reform – Estonia (ref. Ares (2024)8985097);
9. Finland: Sisäministeriö Inrikesministeriet, Kansallinen täytäntöönpanosuunnitelma (ref. Ares(2024)8928823);
10. France: Plan national de mise en œuvre du Pacte sur la migration et l'asile (ref. Ares(2025)45145)
 - 10.a - Plan national de mise en œuvre du Pacte européen sur la migration et l'asile ANNEXE BUDGETAIRE (Ares(2025)45145) (ref. Ares(2025)45145) ;
11. Germany: Bundesministerium des Inneren und Heimat: Nationaler Umsetzungsplan NIP (ref. Ares(2025)343825);
12. Greece: Εθνικό Σχέδιο Εφαρμογής του Συμφώνου για τη Μετανάστευση και το Άσυλο (ref. Ares(2024)9205852);
 - 12.a - Εθνικό Σχέδιο Εφαρμογής- Σύμφωνο για τη Μετανάστευση και το Άσυλο - Γενική Γραμματεία Ευάλωτων Πολιτών και Θεσμικής Προστασίας Υπουργείο Μετανάστευσης και Ασύλου (ref. Ares(2024)9205852);
 - 12.b - Παρατηρήσεις και απόψεις των Οργανώσεων της Κοινωνίας των Πολιτών για το Νέο Σύμφωνο για τη Μετανάστευση (ref. Ares(2024)9205852);
13. Ireland: National Implementation Plan Ireland, Implementation of the Pact on Migration and Asylum (ref. Ares(2025)2793296);
14. Italy: Patto Europeo sulla Migrazione e l'Asilo Piano di Attuazione Nazionale – Italia– (ref. Ares(2025)45462);
 - 14.a - Allegato I: Prospetto di dettaglio dei fabbisogni di risorse umane, infrastrutture ed esigenze informatiche e strumentali per ciascun Building Block (ref. Ares(2025)45462);
 - 14.b - Allegato II: Dipartimento per le politiche del personale – tabella trattamento economico funzionari (ref. Ares(2025)45462);
15. Latvia: Eiropas Migrācijas un patvēruma pakta nacionālo īstenošanas plānu (ref. Ares(2025)343940);
16. Lithuania: National Implementation Plan (ref. Ares(2024)8941194);

17. Luxembourg: Plan National de Mise en Œuvre (ref. Ares(2024)8858507);
18. Malta: Implementation Plan For The Pact On Migration And Asylum 2024 (ref. Ares(2024)8926766);
19. The Netherlands: Nationaal Implementatieplan Asiel- en Migratiepact (ref. Ares(2024)9006554);
20. Poland: Poland's position towards the implementation of the Pact on Migration and Asylum in the European Union (ref. Ares(2024)8981873)
21. Portugal: Plano Nacional de Implementação (ref. Ares(2025)8537687);
22. Romania: Plan Național de Implementare a Pactului privind migrația și azilul (ref. Ares(2025)342459);
 - 22.a - ANEXA 1 - Fundamentare costuri Bloc 1.pdf
 - 22.b - ANEXA 2 - Screening_estimare costuri.pdf
 - 22.c - ANEXA 3 - Fundamentare costuri Bloc 3.pdf
 - 22.d - ANEXA 4 - Fundamentare costuri Bloc 4.pdf
 - 22.e - ANEXA 5 - Fundamentare costuri Bloc 5.pdf
 - 22.f - ANEXA 6 - Fundamentare costuri Bloc 6.pdf
 - 22.g - ANEXA 7 - Fundamentare costuri Bloc 7.pdf
 - 22.h - ANEXA 8 - Fundamentare costuri Bloc 8.pdf
 - 22.i - ANEXA 9 - Fundamentare costuri bloc 9.pdf
 - 22.j - ANEXA 10 - Fundamentare costuri Bloc 10.pdf
23. Slovakia: Národný implementačný plán (ref. Ares(2024)9176592);
24. Slovenia: Pakt o Migracijah in Azilu Nacionalni Izvedbeni Načrt (ref. Ares(2024)8868419);
25. Spain: National Implementation Plan – Implementation of the Pact on Migration and Asylum December 2024 (ref. Ares(2025)2798896);
26. Sweden: Sveriges nationella plan för genomförandet av migrations – och asylpakten (ref. Ares(2024)8906479).

You will find attached Annex A, listing all documents falling within the scope of your application, with the type of disclosure applied to them.

2. PUBLICLY AVAILABLE DOCUMENTS

Regarding identified documents 3, 6, 11, 13, 16, 17, 19, 23, 24 and 25, they have been released to the public by the Member States concerned. I therefore refer you to the relevant hyperlinks below:

3. Bulgaria:

<https://pris.government.bg/document/dd484df1ab524ca2c860dff2ba531d52>

6. Czech Republic:

<https://mv.gov.cz/soubor/zpravodajstvi-dokumenty-akcni-plan-pdf.aspx>

11. Germany:

https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/migration/BMI25006.pdf?__blob=publicationFile&v=1

13. Ireland:

https://assets.gov.ie/static/documents/IE-EU_Pact_National_Implementation_Plan_Ireland.pdf

16. Lithuania:

<https://www.etar.lt/portal/lt/legalAct/9610dc84b70d11ef88c08519262548c4>

17. Luxembourg:

[Plan national de mise en oeuvre du Pacte européen sur la migration et l'asile - Ministère des Affaires intérieures - Le gouvernement luxembourgeois](#)

19. The Netherlands:

[Aanbiedingsbrief bij afschrift Tweede Kamerbrief over invoering EU Migratiepact | Kamerstuk | Rijksoverheid.nl](#)

23. Slovakia:

<https://rokovania.gov.sk/RVL/Material/30285/1>

24. Slovenia:

<http://vrs-3.vlada.si/MANDAT22/vladnagrada.nsf/71d4985ffda5de89c12572c3003716c4/5420da43837f017cc1258beb004f2355?OpenDocument>

25. Spain:

<https://www.interior.gob.es/opencms/es/servicios-al-ciudadano/pacto-europeo-de-migracion-y-asilo/>

3. ASSESSMENT UNDER REGULATION (EC) NO 1049/2001

Having examined the documents identified that are not publicly available, and considering the views expressed by the Member States consulted pursuant to Article 4(5) of this regulation (see below), the Secretariat-General concludes that partial access is granted to documents 1, 2, 4, 5, 7, 9, 10, 10.a, 15, 18, 20, 21, 22 and 26.

As regards documents 8, 12, 12.a, 12b, 14, 14.a, 14.b and 22.a-22.j, I regret to inform you that access thereto is refused.

The detailed reasons for the refusal of access to the documents or to their parts are set out below.

3.1. Consultation of the national authorities of Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Greece, Italy, Latvia, Malta, Poland, Portugal, Romania and Sweden

Documents 1, 2, 4, 5, 7, 8, 9, 10, 10.a, 12, 12.a, 12.b, 14, 14.a, 14.b, 15, 18, 20, 21, 22, 22.a-22.j, and 26 (hereafter ‘the unpublished documents’) originate from the authorities of, respectively, Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Greece, Italy, Latvia, Malta, Poland, Portugal, Romania and Sweden.

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

In accordance with Article 4(5) of Regulation (EC) No 1049/2001, a Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.

According to the case-law of the Court of Justice of the European Union, Article 4(5) of Regulation (EC) No 1049/2001 places the Member States in a position that is different from that of other third-party originators³. While it does not give Member States a discretionary right of veto to public disclosure of documents authored by that Member State, the prior agreement of the Member State provides a form of assent confirming that none of the grounds of exception under Article 4(1) to (3) is present⁴. Against this background, Article 4(5) of said regulation as interpreted by the Court of Justice of the EU exempts the EU institution from the duty to carry out, with respect to the documents to which access is refused by a Member State, an exhaustive assessment of the reasons for objecting put forward by that Member State on the basis of the exceptions in Article 4 of Regulation No 1049/2001⁵.

Pursuant to these provisions of Article 4(4) and (5) of Regulation (EC) No 1049/2001, a consultation of the national authorities, from whom the documents requested originated, was conducted by the European Commission services.

Please find below the replies received from these consultations:

The authorities of Austria, Belgium, Croatia, Cyprus, Finland, France, Latvia, Portugal, and Sweden agreed to the disclosure of the documents originating from them.

The authorities of Denmark agreed to partial disclosure of document 7, with the limited passages thereof redacted based on the exception laid down in the first subparagraph of Article 4(3), (protection of the decision-making process) of Regulation (EC)

³ Judgment of 18 December 2007, C-64/05, *Sweden v Commission*, EU:C:2007:802, paragraph 43.

⁴ *Ibidem*, paragraphs 75 and 76.

⁵ Judgment of the General Court of 24 January 2024, T-602/22, *Veneziana Energia Risorse Idriche Territorio Ambiente Servizi SpA (Veritas) v Commission*, EU:T:2024:26, paragraph 40.

No 1049/2001. The Danish authorities explained that ‘full access to the document would have a negative impact on the decision-making process as this has yet to be completed’.

The authorities of Malta agreed to partial disclosure of document 18, with the limited passages thereof redacted based on the exceptions of first, third and fourth indents of Article 4(1)(a) (protection of the public interest as regards international relations and the financial policy of Malta), of Regulation (EC) No 1049/2001. The Maltese authorities underlined that the redacted parts of the document contain the ‘financial estimates related to salaries and specific reference to third countries, which should remain confidential on the grounds of Article 4(1)(a) of Regulation (EC) No 1049/2001’. Regarding salaries and costs, the Maltese authorities explained that ‘these are still estimates at this stage and that publishing them would impact the financial and monetary policy of Malta, since these remain subject to certain approvals. In addition, publishing the estimated costs of equipment would also impede on public procurement procedures as a tender would need to be issued and the estimated costs are not usually made public’. With regard to the reference to specific third countries, the Maltese authorities consider that ‘such reference could impact international relations with these countries since returns are often a sensitive matter for the internal politics of third countries’. Malta also argues that ‘the national implementation plan (NIP) includes actions envisaged to strengthen migration management which if fully disclosed, might lead to the misuse of some of the information by migrant smugglers’.

The authorities of Poland agreed to partial disclosure of document 20, while the part thereof (Annex) is withheld based on the exceptions in first indent of Article 4(1)(a) (protection of public interests as regard public security), as well as of first subparagraph of Article 4(3), (protection of the decision-making process) of Regulation (EC) No 1049/2001.

The Polish authorities are of the opinion that ‘the ongoing dialogue [between certain Member States and the Commission] aimed at clarifying the modalities for a safe and responsible implementation of some key provisions of the legal acts, commonly referred to as the Pact on Migration and Asylum, must be protected. Hence the disclosure must be refused on the basis of Article 4(3), as it may impact the national process of overhauling the legal framework concerning international protection with the aim of tightening and streamlining relevant procedures’. The Polish authorities further explain that ‘the Commission remains in a dialogue with certain Member States to aid them in their efforts and to ensure that they are ready for the application of new provisions before the deadline for their application set for June 2026. Taking into account that parts of the position presented within the document in question may not be complete and that they refer to issues that still remain subject of consideration of relevant national authorities, its disclosure [...] would significantly undermine the ongoing consultation process and dialogue’.

In addition, the Polish authorities explain that ‘the content of the annex is sensitive due to references to areas of intervention that are relevant from the point of view of Poland’s internal security, therefore the exception concerning public security also applies. [...]

Many comments refer to the weaknesses of adopted solutions. It constitutes an important information for hostile regimes and criminal organisations that we still do not have legal tools to face the instrumentalisation of migration and therefore they can continue the hybrid attacks against Poland and other Member States. Taking this into account we would also like to invoke Article 4 (1) a) first indent of the Regulation 1049/2001 as an open access can pose a threat to public security’.

The authorities of Romania agreed to the disclosure of its Plan, namely, document 22. Nevertheless, they objected to the disclosure of the annexes (documents 22.a to 22.j). They indicated that such a disclosure would undermine the decision-making process which is protected by the exception laid down in the first subparagraph of Article 4(3) (protection of the decision-making process) of Regulation (EC) No 1049/2001. The Romanian authorities underlined that documents 22.a to 22.j contain specific details related to the strategic planning stage, as regards the implementation of expected results, indicators of current institutional capacity, projections for institutional development, and assessments of the human and financial resources required. Disclosure of such elements could adversely impact the objectives for which no final decision has yet been taken.

The authorities of Estonia indicated that disclosure of document 8 would undermine the public interest protected by the exception laid down in Article 4(1)(a) (protection of the public interests as regards public security, state defence, international relations, and financial stability of Estonia) and in Article 4(3) (protection of the decision-making process) of Regulation (E) No 1049/2001.

The Estonian authorities also underlined that ‘[t]he National Implementation Plan outlines Estonia’s capabilities to receive, process, and detain illegal immigrants as well as the exact limits of such capabilities i.e. when the state system will be unable to cope with the volume of illegal arrivals. Since other Member States in the region, namely Finland, Latvia, and Lithuania, had been victims of migration instrumentalisation efforts carried out by undemocratic regimes of Russian Federation and the Republic of Belarus, public access to the information about maximum capabilities and resilience limits of Estonia’s border guard and asylum protection systems will undoubtedly provoke a direct hybrid attack on the state’s border by hostile states as we have seen previously’.

The Estonian authorities noted that since ‘[t]he National Implementation Plan outlines Estonia’s internal prognoses and analyses of the situation and related capabilities, as well as hold opinions intended for internal use’. Therefore, ‘the National Implementation Plan holds information (e.g. necessary reforms, suggested monetary commitments) based on which the decision in the Member States’ institutions is yet to be taken. Disclosure of the document would seriously undermine the decision-making process as well as parliamentary negotiations’.

The authorities of Greece indicated that disclosure of documents 12, 12.a and 12.b would undermine the public interest protected by the exceptions laid down in the first indent of Article 4(1)(a) (protection of public interests as regard public security), first subparagraph of Article 4(3) (protection of decision-making process) and in the third

indent of Article 4(2) (protection of the purpose of inspections, investigations and audits) of Regulation (EC) No 1049/2001.

The Greek authorities underlined that those documents would affect the public security and public order, since ‘[t]he National Implementation Plan shall include detailed information on: operational mechanisms and procedures at the external borders; assessment of operational weaknesses and needs; planning critical infrastructure’. The Greek authorities further explained that ‘disclosure of such content entails a real and foreseeable risk of undermining public security within the meaning of Article 4 (1) (a), first indent, since [it] may reveal sensitive information for national operational planning and it affects the management of critical border and security infrastructure and [that] the application of this exception is not subject to balancing against an overriding public interest’.

In addition, the Greek authorities invoked the exception in Article 4(3) (serious undermining of the decision-making process’ claiming that ‘[t]he National Implementation Plan shall consist of: an internal planning document [and is] subject of an ongoing evaluation by the Commission’. They added that ‘disclosure at this point in time [would] limit the capacity of the Greek authorities to freely review and adjust positions and priorities and it would even complicate and anticipate the outcome of ongoing administrative procedures’. The Greek authorities referred to the case-law allowing ‘this exception to be applied to documents which have not yet led to definitive positions (C-57/16 P, *ClientEarth II*)’.

Also, the Greek authorities invoked the exception in Article 4(2) (protection of the purpose of control, inspection, investigations and audit), claiming that that the documents requested ‘are directly linked to an internal audit procedure in the AMIF/BMVI framework and to the risk and financing needs assessments as well as to the preparation of future procurement operations; they also contain legal and administrative considerations for the implementation of the new EU legislation’. It was further explained that ‘[t]he disclosure of such information will adversely affect ongoing audits, jeopardise the integrity of procurement procedures and reveal sensitive legal considerations’. In the opinion of the Greek authorities, this information shall be withheld to protect the purpose of control, inspection and legal analysis, which should be protected pursuant to Article 4(2) of Regulation (EC) No 1049/2001.

The authorities of Italy indicated that disclosure of documents 14, 14.a and 14.b would undermine the public interest protected by the exception laid down in the first and third indents of Article 4(1)(a) (protection of public interests as regard public security and international relations) of Regulation (EC) No 1049/2001. The Italian authorities also underlined that the documents requested relate to the public security and public order, international relations and police activities of that Member State.

3.2 European Commission's assessment

3.2.1 *Prima facie* assessment of the explanations given by Denmark, Estonia, Greece, Italy, Malta, Poland and Romania

In its judgment in case T-74/16 (*Pagkyrios Organismos Ageladotrofon (POA) v Commission*), the General Court considered that ‘before refusing access to a document originating from a Member State, the institution concerned must examine whether that Member State has based its objection on the substantive exceptions in Article 4(1) to (3) of Regulation No 1049/2001 and has given proper reasons for its position. Consequently, when taking a decision to refuse access, the institution must make sure that those reasons exist and refer to them in the decision it makes at the end of the procedure’⁶.

The General Court clarified in this judgment that the institution ‘must, in its decision, not merely record the fact that the Member State concerned has objected to disclosure of the document applied for, but also set out the reasons relied on by that Member State to show that one of the exceptions to the right of access provided for in Article 4(1) to (3) of [Regulation (EC) No 1049/2001] applies’⁷.

Moreover, according to the case-law regarding Article 4(5) of Regulation (EC) No 1049/2001, ‘the institution to which a request for access to a document has been made does not have to carry out an exhaustive 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 No 1049/2001’⁸.

Therefore, as clarified by the General Court, the institution dealing with the request for public access to a document is not required to carry out a specific and individual examination of a document originating from a Member State that refused to grant access thereto⁹. Considering the above, the Secretariat-General has carried out a *prima facie* assessment of the replies provided by Denmark, Estonia, Greece, Italy, Malta, Poland and Romania, following which the Secretariat-General has concluded that the reasons substantiating the objections of these Member States are capable of justifying *prima facie* the non-disclosure of (the parts of) the documents covered by the exceptions invoked.

The reasons are set out below.

a) Protection of the public interest as regard public security

The first indent of Article 4(1)(a) of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards public security’.

⁶ Judgment of the General Court of 8 February 2018, *Pagkyrios Organismos Ageladotrofon (POA) v Commission*, T-74/16, EU:T:2018:75, paragraph 55.

⁷ *POA v Commission*, cit., paragraph 56.

⁸ *Ibid*, paragraph 57.

⁹ *Ibid*, paragraphs 60 and 61.

Estonia, Greece, Italy, Malta and Poland invoked this exception regarding the documents originating from their authorities, respectively, documents 8, 12, 12.a, 12.b, 14, 14.a, 14.b, 18 and 20.

The National Implementation Plans (hereafter the ‘NIPs’) are established by Member States in accordance with Article 84(3), second subparagraph of Regulation (EU) 2024/1351 of the European Parliament¹⁰ (hereafter ‘AMMR’) and Article 75, second subparagraph, of Regulation (EU) 2024/1348 of the European Parliament and of the Council¹¹ (hereafter ‘APR’). The NIPs are strategic documents outlining how each Member State intends to fulfil its commitments under the broader framework on the Pact on Migration and Asylum¹². The NIPs include detailed strategies and measures that a Member State will need to implement to address various aspects of migration and asylum, including to uphold its internal security, at its borders, having incidence on the EU territory as a whole. The plans cover areas such as border management, asylum procedures, integration policies, return and readmission and resource allocation.

The NIPs are developed by Member States, taking into account their unique national contexts, reflecting, in particular, the specific migratory situation, needs and challenges each Member State is facing, including in relation to security threats that can be encompassed in migratory trends. As stated in the Common Implementation Plan, “every Member State has different challenges to tackle and finds itself at different starting points”. Each Member State exercised autonomy in drafting its NIP with a different level of detail, including on security measures, and either with or without the intention for it to be published.

Documents 8, 12, 12.a, 12.b, 14, 14.a and 14.b, and the redacted parts of documents 18 and 20 contain a detailed account of the Member States’ national context, current legislative framework and administrative practices, the organisational set-up and structures in place, the existing capacities as well as the challenges linked to geographic circumstances, as well as the costs required to match needs with resources. The abovementioned elements, as well as their level of detail, vary from one Member State to another.

By providing certain detailed information, the Member States concerned, authors of these documents, exposed internal vulnerabilities, including in terms of security issues.

Indeed, (the redacted parts of) these documents contain sensitive information about capabilities and resilience limits of these Member States in the fields relevant to the migration and asylum policy, including border guards and asylum protection systems. If

¹⁰ Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013. OJ L, 2024/1351, 22.5.2024. ELI: <http://data.europa.eu/eli/reg/2024/1351/oj>.

¹¹ Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU. OJ L, 2024/1348, 22.5.2024. ELI: <http://data.europa.eu/eli/reg/2024/1348/oj>.

¹² https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en

made public, said information could be exploited by individuals or groups intending to breach security measures, thus facilitating the bypassing of effective cross-border checks and obstructing the attempts of the competent authorities to control and prevent illegal activities.

Please also note that these Member States rely on their relationship with the Commission, led by the principle of sincere cooperation, and trust that the information they share as confidential will be kept confidential and not released without their consent. Without due regard to the confidential treatment, those Member States would refrain from sharing such details and explanations, notably about the current risks of threats to their public security related to migration and asylum.

The disclosure of these documents, against the explicit objection of Estonia, Greece, Italy, Malta, Poland and Romania, would seriously undermine the climate of mutual trust and openness between the Commission and said Member States, which is essential for the purposes of working towards the implementation of the Migration and Asylum Pact by mid-2026. Implementation of the Migration and Asylum Pact is, in turn, essential for the public security of the EU and its Member States.

In light of the foregoing and given the increasing security threats posed, inter alia, by the instrumentalisation of migrants at the EU's borders, the Secretariat-General considers that the disclosure of the refused (parts of the) documents would seriously undermine the public interest as regards public security of the Member States concerned and the European Union as a whole.

Consequently, the Secretariat-General is of the opinion that the explanations given by Estonia, Greece, Italy, Malta and Poland *prima facie* justify the application of the exception set out in the first indent of Article 4(1)(a) of Regulation No 1049/2001 to entire documents 8, 12, 12.a, 12.b, 14, 14.a, 14.b, as well as to the redacted parts of documents 18 and 20.

In light of the above, the exception laid down in Article 4(1)(a), first indent of Regulation (EC) No 1049/2001 justifies the protection of documents 8, 12, 12.a, 12.b, 14, 14.a, 14.b and the redacted parts of documents 18 and 20.

b) Protection of the decision-making process

The first indent of Article 4(3) of Regulation (EC) No 1049/2001 provides 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'.

Denmark, Estonia, Greece, Poland and Romania invoked this exception with regard to the documents originating from their authorities, respectively, documents 7, 8, 12, 12.a, 12.b, 22.a to 22.j and the redacted parts of document 20.

The entry into force of the Pact on Migration and Asylum in June 2024 marked a major milestone in the development of a comprehensive approach to migration, asylum, border management and integration. The decision-making processes related to the implementation of the Pact on Migration and Asylum, which is a major overhaul of the existing legal framework in this sensitive policy field, are still ongoing at European Union level to ensure that the EU and Member States' national asylum, reception and migration systems will be ready for the full application of the Pact by mid-2026.

For that purpose, all NIPs, including documents 7, 8, 12, 12.a, 12.b, 20 and 22.a to 22.j, have been prepared by each Member State. In accordance with Article 84(3), second subparagraph, of AMMR and Article 75, second subparagraph, of APR: *“Each Member State shall complete the implementation of its plan by 1 July 2026”*. Until then, there are multiple decisions that are in the process of being taken at EU level to accompany the implementation of the Pact.

In their NIPs, Member States set out actions for the implementation of the Pact of Migration and Asylum, the timeline for their implementation, as well as their financial needs in relation to the implementation of the Pact on Migration and Asylum. To cater for the Member States' needs, in 2025, the Commission launched specific actions under the Asylum, Migration and Integration Fund ('AMIF')¹³ and by the Instrument for Financial Support for Border Management and Visa Policy ('BMVI')¹⁴ with a view to supporting Member States in the implementation of the Pact on Migration and Asylum.

In such context, and apart from the decision-making process which will lead to the establishment by the Council of the first Annual Solidarity Pool pursuant to Article 57 of AMMR (see the dedicated section 3.2.2 below), provided that the relevant conditions are fulfilled, the Commission approves the amendments to the Member States' programmes supported by the AMIF and by the BMVI when justified by the Member States' participation in the specific actions for the implementation of the Pact on Migration and Asylum.

In view of the foregoing, Member States need to be free to share sensitive information with the European Commission on policy areas central to their public security, and trust that the Commission will respect their confidentiality.

Consequently, the Secretariat-General considers that there is a reasonably foreseeable and not purely hypothetical risk that public disclosure of documents 7, 8, 12, 12.a, 12.b, and 22.a to 22.j; as well as the redacted parts of document 20, would seriously undermine the ongoing decision-making processes of the Commission described above.

¹³ Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund. OJ L 251, 15.7.2021, pp. 1. ELI: <http://data.europa.eu/eli/reg/2021/1147/oj>.

¹⁴ Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy. OJ L 251, 15.7.2021, p. 48. ELI: <http://data.europa.eu/eli/reg/2021/1148/oj>.

Accordingly, the Secretariat-General is of the opinion that the explanations given by Denmark, Estonia, Greece, Poland and Romania *prima facie* justify the application of the exceptions in the first indent of Article 4(3) of Regulation No 1049/2001 to documents 7, 8, 12, 12.a, 12.b, 22.a to 22.j and the redacted parts of document 20.

3.2.2 Protection of the decision-making process leading to the adoption of the Council implementing act establishing the ‘Annual Solidarity Pool’

The first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 provides 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’.

In documents 1, 2, 4, 5, 8, 9, 10, 10.a, 12, 12.a, 12.b, 14, 14.a, 14.b, 15, 18, 20, 21, 22, 22.a-22.j and 26 (the unpublished documents), the sections dedicated to ‘Building Block 7 – Making Solidarity Work’ outline the legal and operational actions that each Member State would need to take at national level to operationalise the new Solidarity mechanism laid down in Part IV (Chapter I) of the AMMR.

As such, these sections contain information, including figures, communicated by Austria, Belgium, Croatia, Cyprus, Estonia, Finland, France, Greece, Italy, Latvia, Malta, Poland, Portugal, Romania, and Sweden¹⁵. The information relates, *inter alia*, to the way Member States are planning to develop the necessary capacity to identify their solidarity needs and to ensure the necessary capacity to implement ‘solidarity measures’ (as defined in Article 56 of AMMR) to be pledged by Member States in the context of the exercise preceding the establishment of the Annual Solidarity Pool pursuant to Article 57 of AMMR. Hence the information takes stock *inter alia* of the estimated necessary resources and competent personnel, including in the Dublin units and for any additional security checks; the needs in terms of building the necessary infrastructure and procuring the equipment required to implement relocations within the required time limit; the need of a coverage through a case management system as well as transport and reception capacity, including relocation hubs and (remote) interview facilities, etc.

These positions are at the heart of the pledging exercise that the Member States are having within the Council’s ‘High-Level EU Solidarity Forum’ pursuant to Article 13 of AMMR. In accordance with this pledging exercise, the Council is to adopt an implementing act pursuant to Article 57 of AMMR establishing the Annual Solidarity Pool, also including, among others, the specific pledges that each Member State has made for each type of solidarity contribution referred to in Article 56(2) during the High-Level Forum meeting.

In addition, please note that solidarity efforts in the framework of migration and asylum management within the EU and between Member States are a politically sensitive topic in a number of Member States and at EU level. There is a risk that negotiations could stall if external pressure on Member States — arising from the disclosure of their

¹⁵ Denmark has chosen not to opt in to the solidarity mechanism established by the AMMR, meaning it has no legal or political obligation to participate in it.

assessed needs and capacities in their national plans — affects their positions within the Council. The Commission estimates the Member States need a ‘space to think’ in order to find compromises to implement the solidarity mechanism of the Migration and Asylum Pact, which is cornerstone for the whole implementation of the Pact.

Therefore, the disclosure of the information at issue would result in a specific, actual and reasonably foreseeable risk of seriously undermining the ongoing decision-making process leading to the adoption of the Council implementing act establishing the ‘2025 Solidarity Pool’.

For these reasons, the Secretariat-General must redact parts of documents 1, 2, 4, 5, 9, 10, 10.a, 15, 18, 20, 21, 22, and 26. The same considerations apply to parts of documents 8, 12, 12.a, 12.b, 14, 14.a, 14.b and 20.a-22.j, which are, however, withheld in their entirety for the reasons explained in the previous sections.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

The settled case-law confirms that it is for the applicant to put forward specific circumstances that show that there is an overriding public interest which justifies the disclosure of the documents concerned¹⁶.

In your confirmatory application you claim that ‘disclosing the content of the National Implementation Plans is essential for understanding how the EU Pact on Asylum and Migration will be implemented, in a shared responsibility, by the European Institutions and by its Member States’ and merely refer to ‘the EU principle of openness (art 1 TEU) and Article 15(1) TFEU [which] provides that the institutions, bodies, offices and agencies of the European Union are to conduct their work as openly as possible. The same principle of openness is expressed in Article 10(3) TEU, in Article 298(1) TFEU, and in Article 42 of the Charter of Fundamental Rights of the European Union which enshrines the right of access to documents.’

According to the case-law, it is for the applicant (¹⁷), on the one hand, to demonstrate the existence of a public interest likely to prevail over the reasons justifying the refusal of the documents concerned and, on the other hand, demonstrate precisely in what way disclosure of the documents would contribute to assuring protection of that public interest to the extent that the principle of transparency takes precedence over the protection of the interests which motivated the refusal (¹⁸).

¹⁶ See e.g. judgment of 5 December 2018, *Campbell v European Commission*, T-312/17, EU:T:2018:876, paragraph 58.

¹⁷ Judgment of the Court of Justice of 2 October 2014, *Strack v Commission*, C-127/13, EU:C:2014:2250, paragraph 128.

¹⁸ Judgment of the General Court of 9 October 2018, *Anikó Pint v European Commission*, T-634/17, ECLI:EU:T:2018:662, paragraph 48; Judgment of the General Court of 23 January 2017, *Association Justice & Environment, z.s v European Commission*, paragraph 53; Judgment of the General Court of

In its judgment in case *Turco v Council*, the Court held explicitly that the overriding public interest capable of justifying the disclosure of a document covered by this exception must, as a rule, be distinct from the principles of transparency, openness, and democracy or of participation in the decision-making process ⁽¹⁹⁾. The reason is that those principles are effectively implemented by the provisions of Regulation (EC) No 1049/2001 as a whole. In its judgment in the *Strack* case ⁽²⁰⁾, the Court of Justice ruled that in order to establish the existence of an overriding public interest in transparency, it is not sufficient to merely rely on that principle and its importance, but that an applicant has to show why in the specific situation at hand, the principle of transparency is in some sense especially pressing and capable, therefore, of prevailing over the reasons justifying non-disclosure ⁽²¹⁾.

Furthermore, in case C-514/07, the General Court held that ‘it is only where the particular circumstances of the case substantiate a finding that the principle of transparency is especially pressing that that principle can constitute an overriding public interest capable of prevailing over the need for protection of the disputed documents and, accordingly, capable of justifying their disclosure in accordance with the last line of Article 4(2) of Regulation No 1049/2001’⁽²²⁾.

In your confirmatory request you do not provide any concrete arguments showing why, having regard to the specific facts of the case, a public interest is so pressing that it overrides the need to protect the documents in question from disclosure.

Consequently, references to the general circumstances such as those indicated in your confirmatory application, cannot provide an appropriate basis for establishing that the principle of transparency was in this case especially pressing and capable, therefore, of prevailing character over the reasons justifying the refusal to disclose the documents in question ⁽²³⁾.

In any event, the EU legislators, in adopting AMMR, provided a legal framework to inform the public on the implementation of the Pact. In accordance with Article 9 AMMR, the Commission adopts each year a European Annual Asylum and Migration Report. Furthermore, in virtue of Article 84 AMMR, the two first reports provide a state of play of the current implementation of both National and EU implementing plans.

In addition, in publishing the Common Implementation Plan for the Pact on Migration and Asylum (COM(2024) 251 final), the Commission has already informed the public about how it plans to ensure that the two-year transition period is used in an effective

5 December 2018, *Falcon Technologies International LLC v European Commission*, T-875/16, ECLI:EU:T:2018:877, paragraph 84.

¹⁹ Judgment of the Court of First Instance of 23 November 2004, *Maurizio Turco v Council of the European Union*, T-84/03, ECLI:EU:T:2004:339, paragraphs 81-83.

²⁰ Judgment of the Court of Justice of 2 October 2014 in case C-127/13 P, *Strack v Commission*, ECLI:EU:C:2014:2250, paragraph 128.

²¹ *Idem*, paragraph 129.

²² Judgment of the Court of 21 September 2010 in case C-514/07, *Sweden and Others v API and Commission*, ECLI:EU:C:2010:541, paragraph 156.

²³ Judgment of the Court of Justice of 14 November 2013, *Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission*, Joined Cases C-514/11 P and C-605/11 P, ECLI:EU:C:2013:738, paragraph 93.

manner, ensuring that the necessary administrative, operational, and legal steps are taken by all relevant stakeholders, including Member States.

In light of the above, the Secretariat-General takes the view that the considerations you presented do not establish effectively and unequivocally the existence of an overriding public interest in the disclosure that would outweigh the interests of protecting the decision-making process. The negative consequences of the requested disclosure would far outweigh the positive aspects that such disclosure could potentially bring to the public.

Against this background, the Secretariat-General has not been able to identify any public interest capable of overriding the interests protected by the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001. The Secretariat-General concludes therefore that an overriding public interest has not been demonstrated in this case.

5. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, (further) partial access to documents requested in your application was considered.

For the reasons described above, no partial access can be granted to the withheld documents without undermining the interests protected by the invoked exceptions. In the same vein, no wider access can be granted to the documents to which a partial access is given.

6. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

*For the Commission
Ilze JUHANSONE
Secretary-General*

Enclosures : Annex A and 14 attachments

