



Council of the
European Union

Brussels, 3 July 2014

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INF 230
API 77

NOTE

From : General Secretariat of the Council
To : Working Party on Information
Subject: Public access to documents
- Confirmatory application No 19/c/01/14

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 9 April 2014 and registered on the same day ([Annex 1](#)).
- 1st reply from the General Secretariat of the Council dated 16 May 2014 and 2nd reply dated 19 June 2014 ([Annex 2](#))
- confirmatory application dated 26 June 2014 and registered the same day ([Annex 3](#)).

[E-mail message sent to DGC Sanctions on 9 April 2014 - 1:47pm]

DELETED

From: **DELETED**

Sent: Wednesday, April 09, 2014 1:47 PM

To: DGC SANCTIONS

Cc: **DELETED**

Subject: **DELETED** Private & Confidential Information Request

Dear Sirs,

Kindly find attached our urgent letter requesting information in respect of our above named client.

We would be grateful if you could please confirm receipt of this letter and address your substantive response to **DELETED**

Should you require any further information please do not hesitate to contact us.

DELETED

Private and Confidential

Council of the European Union
General Secretariat
DG C 1C
Rue de la Loi/Wetstraat 175
B-1048 Bruxelles/Brussel
BELGIQUE/BELGIË

FAX: (32-2) 281 69 34

EMAIL: sanctions@consilium.europa.eu

9 April 2014

Dear Sirs,

Subject: [REDACTED] (referred to in the sanctions list as [REDACTED]
[REDACTED] and Council Decision of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in UKRAINE ("the Decision") and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in UKRAINE ("the Regulation").

I am the legal representative of [REDACTED] instructed by him to apply pursuant to Article 263 TFEU for the annulment of the abovementioned Decision and Regulation.

I set out below requests for information and/or documents under 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 ("Regulation 1049/2001") and requests in relation to data protection under Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ("Regulation 45/2001").

[REDACTED]

Information Request

Pursuant to the right of access to documents in Regulation 1049/2001, I hereby request the following documents and/or information:

1. All documents and/or information which relate to [REDACTED].
2. All documents and/or information describing the “criminal proceedings in Ukraine” to which our client was said to be subject on 5 March 2014.
3. All documents and/or information describing the alleged “crimes” in respect of which [REDACTED] was said to be investigated “in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine”. In particular, please specify all of the information and documents relied on by the Council in finding that:
 - (a) [REDACTED] was subject to “criminal proceedings” in Ukraine;
 - (b) the alleged “crimes” involved “embezzlement”;
 - (c) the “embezzlement” was of Ukrainian “State funds”;
 - (d) these funds were transferred outside Ukraine; and
 - (e) the transfer of the funds was “illegal”.
4. In each case please specify the source of the information and/or documentation and the date upon which it was received by the Council.
5. All documents and/or information relied on by the Council in assessing the accuracy of the documents and information referred to above.
6. All documents and/or information relied on by the Council in determining the nature and extent of the restrictions to be placed on [REDACTED], in particular in relation to any consideration of the proportionality of the restrictions.

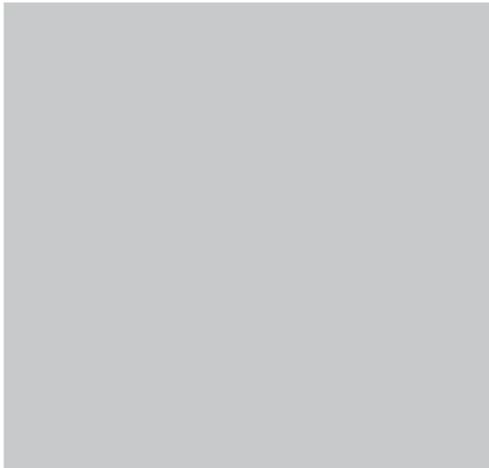
I request that these documents be sent to me in machine-readable electronic format to the email address set out below.

As regards [REDACTED]'s rights under Regulation 45/2001, I make the following requests:

1. Pursuant to Article 12 of Regulation 45/2001 please confirm that data has been supplied to the Council relating to the applicant ("the data subject") from a person or persons other than the data subject;
2. Pursuant to Article 12 of Regulation 45/2001 please provide the data subject with the following information:
 - (a) the identity of the controller;
 - (b) the purposes of the processing operation;
 - (c) the categories of data concerned;
 - (d) the recipients or categories of recipients;
 - (e) the existence of the right of access to, and the right to rectify, the data concerning the data subject;
 - (f) the legal basis of the processing operation for which the data are intended;
 - (g) the time-limits for storing the data;
 - (h) the origin of the data and whether the controller contends that it cannot disclose this information for reasons of professional secrecy; and
 - (i) such further information is necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject.
3. The applicant/data subject requests the following under Article 13 of Regulation 45/2001:
 - (a) confirmation as to whether or not data related to him are being processed;
 - (b) information at least as to the purposes of the processing operation, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed;

- (c) communication in an intelligible form of the data undergoing processing and of any available information as to their source;
 - (d) the logic involved in any automated decision process concerning data relating to the data subject.
4. For the avoidance of doubt, the applicant/data subject wishes to have rectified under Article 14 of Regulation 45/2001 without delay inaccurate and incomplete personal data which he believes is held by the Council.
5. The applicant/data subject requests under Article 15(1) of Regulation 45/2001 that the data held by the Council relating to him be blocked because their accuracy is contested by the data subject.

Please confirm that these requests will be addressed within the time limits specified in Regulation 1049/2001 and Regulation 45/2001.





**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

*Directorate-General F
Communication
Transparency*

*- Access to Documents/
Legislative transparency*

RUE DE LA LOI, 175
B – 1048 BRUSSELS
Tel: (32 2) 281 67 10
Fax: (32 2) 281 63 61
E-MAIL:
access@consilium.europa.eu

Brussels, 16 May 2014

DELETED

e-mail:

DELETED

Ref. 14/0758 REV- mjb/dm

Dear **DELETED**,

We have registered your request of 9 April 2014 for access to documents on behalf of **DELETED**, for which you are acting as legal representative. Your request relates to documents concerning Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

On 29 April 2014, you were informed by email that your request for public access under Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter Regulation (EC)1049/2001) will be handled by our service (Access to documents).

¹ Official Journal L 145, 31.5.2001, p. 43.

The other aspects of your request will be handled by the competent service of the General Secretariat (sanctions@consilium.europa.eu).

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) 1049/2001 and specific provisions of the Council's Rules of Procedure¹. On 6 May 2014, the time-limit for replying to your application was extended by 15 working days. Having examined the request, the General Secretariat has come to the following conclusion:

The following documents were identified as corresponding to your request: **6840/14**, **6840/14 ADD 1 RESTREINT UE/EU RESTRICTED**, **6840/14 COR 1**, **6903/14**, **6903/14 ADD 1 RESTREINT UE/EU RESTRICTED**, **6903/14 COR 1**, **CM 1922/14**, **CM 1932/14**, **7324/14**, **7325/14**, **7972/14**, **SN 1694/14** and **MD 65/14**.

Documents **6840/14 ADD 1**, **6903/14 ADD 1**, **7324/14**, **7325/14** and **7972/14** are already public. The full declassified versions of **6840/14 ADD 1** and **6903/14 ADD 1** are set out in documents **6840/14 ADD 1 DCL 1** and **6903/14 ADD 1 DCL 1**. These documents are available for downloading in the public register of Council documents. You will find it using the following link: <http://www.consilium.europa.eu/documents/access-to-council-documents-public-register?lang=en>.

You may also have access to the following documents: **6840/14**, **6840/14 COR 1**, **6903/14**, **6903/14 COR 1**, **CM 1922/14**, **CM 1932/14** and **SN 1694/14**. The documents are attached to this letter.

The remaining document, **MD 65/14**, is a document transmitted by the European External Action Service to the General Secretariat of the Council. It contains a letter from a judicial authority in Ukraine.

¹ Annex II to the Council's Rules of Procedure – Council Decision No 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

The consultations with Ukraine on a possible public disclosure of document MD 65/14 are still in progress. You will be notified of a decision as soon as possible.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosures



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

*Directorate-General F
Communication
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Legislative transparency*

RUE DE LA LOI, 175
B – 1048 BRUSSELS
Tel: (32 2) 281 67 10
Fax: (32 2) 281 63 61
E-MAIL:

access@consilium.europa.eu

Brussels, 19 June 2014

DELETED

e-mail:

DELETED

Ref. 14/0758-ADD-mjb/dm

Dear **DELETED**,

Further to our letter of 16 May 2014 in reply to your request for access to documents on behalf of **DELETED**, for whom you are acting as legal representative, the General Secretariat of the Council has now completed the examination of your request on the basis of Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter Regulation 1049/2001) and specific provisions of the Council's Rules of Procedure² and has come to the following conclusion:

By letter of 16 May 2014, the General Secretariat informed you that documents 6840/14 ADD 1 RESTREINT UE/EU RESTRICTED, 6903/14 ADD 1 RESTREINT UE/EU RESTRICTED, 7324/14, 7325/14 and 7972/14 were already public and granted you full public access to documents 6840/14, 6840/14 COR 1, 6903/14, 6903/14 COR 1, CM 1922/14,

¹ Official Journal L 145, 31.5.2001, p. 43.

² Annex II to the Council's Rules of Procedure – Council Decision No 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

CM 1932/14 and SN 1694/14. It also informed you that consultations as regards the last document of relevance to your request, namely document MD 65/14, were still in progress.

Document MD 65/14 is a document transmitted by the European External Action Service (EEAS) to the General Secretariat of the Council. It contains a letter from a judicial authority in Ukraine.

In accordance with Article 4(4) of Regulation 1049/2001 the General Secretariat has consulted the EEAS on the possible public disclosure of document MD 65/14 originated by the Ukrainian authorities. We are now in a position to inform you that the Ukrainian authorities have requested not to disclose the information contained in the letter.

The General Secretariat has examined the document in compliance with its obligation to carry out its own assessment as to whether any of the exceptions to access to documents contained in Article 4 of Regulation 1049/2001 are applicable. It considers that, in the light of its sensitive nature, unilateral disclosure of document MD 65/14, against the objection of Ukrainian authorities, would negatively affect the climate of confidence among the relevant actors and would hence prejudice the EU's relations with Ukraine. This could also seriously affect trust between the EU and other countries under similar circumstances now or in the future. In the light of the foregoing, the General Secretariat has come to the conclusion that disclosure of document MD 65/14 would undermine the protection of the public interest as regards international relations within the meaning of Article 4(1)(a), third indent, of Regulation 1049/2001.

In addition, the requested document contains information related not only to **DELETED** but also to other identifiable persons. Such information constitutes personal data within the meaning of Article 2(a) of Regulation 45/2001¹. The General Secretariat considers that the public interest in obtaining access to such personal data does not in the present case prevail over the interest of those individuals in protecting it.

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (Official Journal L 8, 12.01.2001, p. 1).

Public disclosure of personal data concerning persons other than **DELETED** contained in document MD 65/14 must therefore also be refused pursuant to Article 4(1)(b) (protection of privacy and integrity of the individual) of Regulation 1049/2001, in conjunction with Articles 8 and 18 of Regulation (EC) No 45/2001.

Accordingly, pursuant to Article 4(1)(a), third indent, (protection of the public interest with regard to international relations) and Article 4(1)(b) (protection of privacy and integrity of the individual) of Regulation 1049/2001 the General Secretariat is unable to grant public access to document MD 65/14.

Statutory remedy notice

Pursuant to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply¹.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

¹ Confirmatory applications are published in the Council's Register of documents. If you introduce a confirmatory application, your personal data will be published in the documents related to your confirmatory application only if you have given your explicit consent for this. Your reply relating to the publication of your personal data will in no way prejudice your rights under Regulation (EC) No 1049/2001.

[E-mail message sent to SECRETARIAT DGF Access on 26 June 2014 - 3:52pm]

From: **DELETED**

Sent: Thursday, June 26, 2014 3:52 PM

To: SECRETARIAT DGF Access

Cc: **DELETED**

Subject: Ref: 14/0758-ADD-mjb/dm **DELETED**

Dear Sirs,

Kindly find attached our response to your letter dated 19 June 2014 in respect of our **DELETED**.

We have sent the same via fax and international post.

We should be grateful if you would please confirm receipt of the same.

Yours faithfully,

DELETED

[REDACTED]

Your ref: 14/0758-ADD-mjb/dm

[REDACTED]

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Council of the European Union
General Secretariat
DG F Communication Transparency
Access to Documents/Legislative Transparency
Rue de la Loi/Wetstraat, 175
B-1048 Bruxelles/Brussel
BELGIQUE/BELGIË

FAX: (32-2) 281 63 61

EMAIL: access@consilium.europa.eu

26 June 2014

Dear Sirs,

Re: Confirmatory application for the Council to reconsider disclosure of document MD 65/14 pursuant to Article 7(2) of Regulation (EC) No 1049/2001.

We write further to your letter dated 19 June 2014 in response to our request for access to documents on behalf of our client, [REDACTED] pursuant to Regulation (EC) No 1049/2001 (the Regulation) and your earlier letter of 16 May 2014.

As confirmed in your letter, you have disclosed to us several internal documents but have refused to disclose document MD 65/14. You state that this document contains a letter from a judicial authority in Ukraine. We understand that the Ukrainian authorities have requested that you do not disclose this document and you have refused access under Articles 4(a) and (b) of the Regulation.

We do not accept that these grounds are made out in this case and in the circumstances we ask the Council to reconsider disclosure of document MD 65/14.

[REDACTED]

Article 4(a) – Refusal of access on grounds that disclosure would undermine international relations

Document MD 65/14 is described as a document transmitted by the European External Action Service (EEAS) to the Council, which contains a letter from a judicial authority in Ukraine.

Our client was listed within Council Decision 2014/119/CFSP and Council Regulation (EU) No 208/2014 and made subject to financial sanctions on the basis of the following statement of reasons:

“Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.”

The material on which the decision to list our client was made must be contained within document MD 65/14 as the documents disclosed with your letter of 16 May 2014 provides no such material.

We do not accept that the unilateral disclosure of a letter from a judicial authority, which forms the sole basis of restrictive measures against our client, can possibly endanger the EU's relations with Ukraine or any other country. Indeed, it is self evident that communications emanating from a judicial organ are intended to be transparent.

No reason has been given for the Ukrainian authorities' refusal to disclose this material. It is plainly of the utmost relevance to our client's case and as such we would ask that the Council reconsider its decision to refuse disclosure of this material.

Article 4(b) – Refusal of access on grounds that disclosure would undermine privacy and the integrity of the individual

The Council has also refused access to document MD 65/14 on the basis that the document also contains information in relation to other identifiable persons and the public interest in obtaining access to the material does not outweigh the interests of those individuals in protecting it.

Any concerns regarding disclosure of this document can be adequately assuaged by the use of appropriate redactions to the document.

Conclusion

Document MD 65/14 appears to be of central relevance to the Council's decision to include our client within Council Decision 2014/119/CFSP and Council Regulation (EU) No 208/2014 and to impose restrictive measures upon him.

It is not accepted that unilateral disclosure of document MD 65/14, which contains a letter from a judicial authority in Ukraine, can possibly endanger international

relations, furthermore any concerns regarding disclosure of the details of third parties can be dealt with by means of redaction.

In the circumstances we ask that the Council reconsider its decision to refuse disclosure and we ask for disclosure of document MD 65/14, in redacted form if necessary, as a matter of urgency.