



Council of the
European Union

Brussels, 10 July 2014

11547/14

INF 241
API 88

NOTE

From : General Secretariat of the Council
To : Working Party on Information
Subject: Public access to documents
- Confirmatory application No 22/c/02/14

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 11 April 2014 and registered on 14 April 2014 and follow-up letters sent to the General Secretariat of the Council on 17 April 2014 and 30 April 2014 respectively ([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 2 July 2014 and registered on 3 July 2014 ([Annex 3](#)).

[E-mail message sent to SECRETARIAT DG F Access and DGC SANCTIONS on 11 April 2014 - 09:04pm]

From: yanukovych.v@mail.ru
Sent: vendredi 11 avril 2014 21:04
To: SECRETARIAT DGF Access; DGC SANCTIONS
Subject: Private and confidential: request for information

Dear Sirs

Please see below my request for information dated 11 April 2014. An original Russian version follows the English translation.

It is important for me to receive your reply as soon as possible.

Viktor Viktorovich Yanukovych

Dear Sirs,

I was surprised and disappointed to find myself included in the list of individuals made subject to EU sanctions that you published on 5 March 2014 in EU Council Decision 2014/119/CFSP and EU Council Regulation 208/2014. These instruments apparently seek to target persons responsible for the "misappropriation of Ukrainian State funds" and "human rights violations". It is absurd to imagine that such allegations could ever be applied to me and indeed no attempt is made in these instruments to demonstrate how they could. For the avoidance of doubt, I want to affirm that I have never committed any such criminal or unlawful act under Ukrainian or EU law, either personally or in my capacity as an active Member of the Ukrainian Verkhovna Rada.

The measures taken against me by the Council of the European Union are evidently flawed and groundless.

What is more, it is impossible to discern how these measures could have any sensible objective, since I do not now, nor have I in the past possessed any assets in any country of the European Union that could conceivably fall within the scope of these measures. All of my personal assets are in Ukraine and have been lawfully declared. None of these assets inside Ukraine have been blocked or frozen. Even though no legal impediment prevents me, I have not taken any steps whatsoever to transfer any part of these assets outside of Ukraine.

I believe that the decision to impose punitive measures against me through EU Council Decision 2014/119/CFSP and EU Council Regulation 208/2014 has been made purely for partisan political purposes. The sanctions were installed only shortly after my father, President Viktor F. Yanukovich, was unlawfully declared deposed and forced to flee Kiev. In light of the very short passage of time between his departure from Kiev and the publication of the above documents, the charges against me have clearly been drawn up in great haste, and no due consideration could conceivably have been given to their contents. Otherwise, and with due consideration, the Council would surely have concluded that the measures proposed were not in fact appropriate, or even, I believe, legal. In the circumstances, it is plainly the case that these sanctions have been imposed against me solely to support the political campaign now being waged against my family and me.

I can confidently declare that I have not acted in violation of the laws of Ukraine and/or those of the European Union. I am not guilty of any of the allegations that form the basis of the decision to impose sanctions against me. Since, at present, no information has been provided as to the precise nature of these allegations, I respectfully request that the Council provide me with the information and evidence that led it to include me in the sanctions lists of 5 March 2014. I fully expect that these materials will disclose no proper basis for the imposition of sanctions against me, and if I am correct on this point, I intend to invite the Court of Justice of the European Union, which oversees the work of the Council in this field, to overturn these sanctions as contrary to the laws and values of the EU. I have worked throughout my political career to bring Ukraine and the EU closer together, and I have always had great respect for the values of the EU. I have every confidence that the EU's own mechanisms and procedures will allow these illegitimate sanctions to be duly challenged and overturned.

Under EU law, any such challenge to the Court of Justice must be made in an extremely short timeframe. Unless I am provided, as soon as possible, with the information and the evidence relied on by the Council when deciding to include me in the list of individuals made subject to sanctions on 5 March 2014, it will be practically impossible for me to take issue with the approach the Council has adopted. Openness and accountability are fundamental principles espoused by the EU, and I am entitled to the information requested under EU law (including under the Transparency Regulation (1049/2001) and the Data Processing Regulation (45/2001)). At the moment the basis for the Council's deliberations in private have never been made available, but it is important that the

grave allegations advanced against me are considered and refuted before the eyes of the public. To this end I therefore look forward to receiving the material requested as soon as possible.

Yours faithfully,

Viktor Viktorovych Yanukovich

[E-mail message sent to SECRETARIAT DG F Access and DGC SANCTIONS on 17 April 2014 - 12:52pm]

From: Eddy Eccles <EEccles@jha.com>

Sent: jeudi 17 avril 2014 12:52

To: SECRETARIAT DGF Access; DGC SANCTIONS

Subject: Strictly Private and Confidential - Urgent - Requests for Information, Evidence and Documents

Attachments: Letter to Council 17 April 2014.pdf

Dear Sirs,

Please see the attached letter of today's date.

Yours faithfully

Joseph Hage Aaronson LLP,
7th Floor,
280 High Holborn,
London,
WC1V 7EE.
E: eeccles@jha.com
T: 020 7851 8817
M: 077 1100 7832

JOSEPH HAGE AARONSON LLP

Joseph Hage Aaronson LLP
280 High Holborn
London WC1V 7EE

+44 (0)20 7851 8888

17 April 2014

Secretary-General of the Council of the European Union
Rue de la Loi 175/Wetstratt 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIE

By email to

access@consilium.europa.eu
sanctions@consilium.europa.eu

Our ref: JXH/TB/EE/

Strictly Private and Confidential

Dear Sirs,

Council Decision No 2014/119/CFSP and Council Regulation (EU) No 208/2014, both of 5 March 2014: Viktor Viktorovych Yanukovych (Annex Name No 10): Requests for Information, Evidence and Documents

1. We act for Mr V Yanukovych in this matter. We refer to his email of 11 April 2014, and to his request that you provide him "*as soon as possible*" with the information and evidence requested, given that it would otherwise be "*practically impossible*" for him to respond to the approach the Council has taken, in light of the impending deadline for the submission of any legal challenges by Mr V Yanukovych to the restrictive measures that the Council has adopted.
2. However, it appears from the responses received to date from the Council's Transparency Service that the Council does not recognise the urgency of the situation, since a substantive response is promised only within the maximum 15 working day period mandated by the Transparency Regulation 1049/2001. A communication received from the Sanctions division of the Council, on the other hand, has not identified any timeframe at all in which we can expect a response to our Requests.
3. In light of the urgency of the situation, we therefore urge the Council to provide the requested material as quickly as possible, and in any event by close of business on Friday 18 April 2014. As we stated before, the Council made the Decision and Regulation, and it must be in a position to

www.jha.com

Joseph Hage Aaronson LLP is a limited liability partnership registered in England & Wales with registered number OC382231. The LLP is authorised and regulated by the Solicitors Regulation Authority. A list of members of the LLP is available for inspection at the LLP's registered address: 280 High Holborn, London, WC1V 7EE, United Kingdom. The word "partner" denotes an LLP member, or a consultant or employee with equivalent standing and qualifications.

Page 2

respond expeditiously to Mr V Yanukovych's Requests. Our client is aware that the Council has been on notice of the need to provide information relating to its decision making process here since at least 2 April 2014, when he understands that the Council received a request by another individual included in the Annexes to the Regulation and Decision. We therefore respectfully request that the Council now provide this information and evidence to us without further delay, in order that Mr V Yanukovych may exercise without interference his rights of defence and right to a fair trial before the Courts of Justice of the European Union.

Yours faithfully,

Joe Hage
Partner
Joseph Hage Aaronson LLP
Tel: +44 (0)20 7851 8888
Email jhage@jha.com

[E-mail message sent to SECRETARIAT DG F Access and DGC SANCTIONS on 30 April 2014 - 4:08pm]

From: Eddy Eccles <EEccles@jha.com>

Sent: mercredi 30 avril 2014 16:08

To: SECRETARIAT DGF Access; DGC SANCTIONS

Subject: Strictly Private and Confidential - Urgent - Requests for Information, Evidence and Documents

Attachments: Letter dated 30 April(293644_1).PDF

Dear Sirs,

Please see the attached letter of today's date.

Yours faithfully,

Joseph Hage Aaronson LLP,
7th Floor,
280 High Holborn,
London,
WC1V 7EE.
E: eccles@jha.com
T: 020 7851 8817
M: 077 1100 7832

JOSEPH HAGE AARONSON LLP

Joseph Hage Aaronson LLP
280 High Holborn
London WC1V 7EE

+44 (0)20 7851 8888

30 April 2014

Secretary-General of the Council of the European Union
Rue de la Loi 175/Wetstratt 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIE

By email to
access@consilium.europa.eu
sanctions@consilium.europa.eu

Our ref: JXH/TB/EE/

Strictly Private and Confidential

Dear Sirs,

Council Decision No 2014/119/CFSP and Council Regulation (EU) No 208/2014, both of 5 March 2014: Viktor Viktorovych Yanukovych (Annex Name No 10): Requests for Information, Evidence and Documents

1. We refer to our client's email of 11 April 2014 and to our letter of 17 April 2014. We have not yet received a substantive reply to either of these communications. Given the urgency of the situation, and the fact of the impending deadline for the submission of any legal challenges to the restrictive measures that the Council has adopted, your failure to respond to our requests is unjustifiable and unfair. In light of the Council's conduct to date, it appears that our client will have to make his application prior to receiving the Information, Evidence and Documents requested, or with at most having had a very limited opportunity to consider that material before the applications have to be made. In the circumstances, our client is already being denied a proper opportunity to consider this material as part of the preparation of his challenges, and we will bring this infringement of his rights of the defence and right to effective judicial protection to the attention of the Court.
2. In the circumstances, please immediately provide us with the material we have requested without any further prevarication. If you remain unwilling or unable to do so, please immediately provide us with detailed reasons for why this is the case.

www.jha.com

Joseph Hage Aaronson LLP is a limited liability partnership registered in England & Wales with registered number OC382231. The LLP is authorised and regulated by the Solicitors Regulation Authority. A list of members of the LLP is available for inspection at the LLP's registered address: 280 High Holborn, London, WC1V 7EE, United Kingdom. The word "partner" denotes an LLP member, or a consultant or employee with equivalent standing and qualifications.

Page 2

Yours faithfully,

Joe Hage
Partner
Joseph Hage Aaronson LLP
Tel: +44 (0)20 7851 8888
Email jhage@jha.com



**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

Mr Joe Hage

e-mail:

jhage@jha.com

eeccles@jha.com

Ref. 14/0690-mjb/ns

Dear Mr Hage,

We registered the request for access to documents of 11 April 2014 submitted by Mr Viktor Viktorovych Yanukovych on 14 April 2014. By letter dated 17 April 2014 sent by email, you informed us that you act for Mr V. Yanukovych on this matter. The 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 14 April 2014, Mr V. Yanukovych was informed by email that his 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). As for the other aspects of his request, the Access to documents service has forwarded it to the competent service of the General Secretariat (sanctions@consilium.europa.eu).

The General Secretariat of the Council has examined the request on the basis of Regulation (EC) 1049/2001 and specific provisions of the Council's Rules of Procedure². On 12 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:

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.

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.

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
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, 19 June 2014

Mr Joe Hage

e-mail:
jhage@jha.com
eeccles@jha.com

Ref. 14/0690-ADD-mjb/dm

Dear Mr Hage,

Further to our letter of 16 May 2014 in reply to your request for access to documents on behalf of Mr Viktor Viktorovych Yanukovych, 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, 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.

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.

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 Mr Viktor Viktorovych Yanukovych 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. Public disclosure of personal data concerning persons other than Mr Viktor Viktorovych Yanukovych 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 reply².

Yours sincerely,

For the General Secretariat

Jakob Thomsen

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).

² 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 and DGC SANCTIONS on 2 July 2014 - 9:32pm]

From: Samantha Wilson [mailto:SWilson@jha.com]
Sent: Wednesday, July 02, 2014 9:32 PM
To: SECRETARIAT DGF Access; DGC SANCTIONS
Subject: Viktor Viktorovych Yanukovych - Confirmatory Application - Ref 14/0690-ADD-mjb/dm

Dear Sirs

Further to your letter dated 19 June 2014 please find attached the Confirmatory Application of Viktor Viktorovych Yanukovych pursuant to Article 7(2) of Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, requesting the Council of the European Union reconsider its position that it is unable to grant public access to document MD 65/14.

Together with the Confirmatory Application, I also attach:

- Letter of the Council of the European Union dated 19 June 2014 (“the Initial Decision Letter”)
- Letter from the Applicant to the Council requesting information, evidence and documents dated 11 April 2014 (“the Initial Application”)
- Letter from the Council to JHA in response to JHA’s letter of 17 April 2014 dated 12 May 2014 (“the Delay Letter”)
- Council Decision 2014/119/CFSP of 5 March 2014, as amended on 14 April 2014 by Council Decision 2014/216/CFSP and Council Regulation (EU) 208/2014 of 5 March 2014 (“the Sanctions Decision”)
- Application for Annulment of Council Decision 2014/119/CFSP of 5 March 2014, as amended, and Council Regulation (EU) 208/2014 of 5 March 2014, without exhibits (“the Annulment Application”). This document is large, so is sent in two parts.¹

I should be grateful if you would please acknowledge receipt by return.

Kind regards

Samantha Wilson
Associate – Qualified in New Zealand

Joseph Hage Aaronson LLP
280 High Holborn
London
WC1V 7EE

+44 (0)20 7851 8812 (D)
+44 (0)7809337319 (M)
SWilson@jha.com

¹ The attachments can be found in ADD 1 and ADD 2 to this document.

JOSEPH HAGE AARONSON LLP

Joseph Hage Aaronson LLP
280 High Holborn
London WC1V 7EE
+44 (0)20 7851 8888

2 July 2014

Secretary-General of the Council of the European Union
Rue de la Loi 175/Wetstratt 175
B-1048 Bruxelles/Brussel
BELGIQUE/BELGIE

By email to

access@consilium.europa.eu
sanctions@consilium.europa.eu

Ref: 14/0690-ADD-mjb/dm
Our ref: JXH/TB/EE

Strictly Private and Confidential

Dear Sirs

Confirmatory Application Requesting the Council to Reconsider its Decision to Refuse Public Access to document MD 65/14

Further to your letter dated 19 June 2014 ("the Initial Decision Letter"), and Article 7(2) of Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ("the Regulation") we, lawyers on behalf of **Viktor Viktorovich Yanukovich**, hereby submit a confirmatory application, requesting the Council to reconsider its position ("the Initial Decision") (a copy of which is attached/enclosed for convenience) that it is unable to grant access to document MD 65/14 ("the Document").

The Grounds for the Confirmatory Application are summarised below.

1. There was no or no sufficient justification for the Council's delay in responding to the Initial Application dated 11 April 2014 (a copy of which Application is attached/enclosed for convenience), as set out in the Council's letter dated 12 May 2014 (a copy of which is attached/enclosed for convenience) ("the Delay Letter"). This is underlined by the fact that the

www.jha.com

Joseph Hage Aaronson LLP is a limited liability partnership registered in England & Wales with registered number OC382231. The LLP is authorised and regulated by the Solicitors Regulation Authority. A list of members of the LLP is available for inspection at the LLP's registered address: 280 High Holborn, London, WC1V 7EE, United Kingdom. The word "partner" denotes an LLP member, or a consultant or employee with equivalent standing and qualifications.

matters referred to in the Delay Letter and the Initial Decision Letter were not such as to constitute this an exceptional case, and/or to justify an extension of the time set in Article 7(1) of the Regulation. The status of the Document should have been taken into account before the Decision to apply Sanctions against the Applicant dated 5 March 2014 (Council Decision 2014/119/CFSP, as amended on 14 April 2014 by Council Decision 2014/216/CFSP and Council Regulation (EU) 208/2014 of 5 March 2014) ("the Sanctions Decision") (a copy of which Decision is attached/enclosed for convenience) was made. Further, any consultation which was required under Article 4(4) of the Regulation regarding the Document ought to have been capable of being completed well within the time specified in Article 7(1). Reference is also made to the matters set out in our letter of 30 April 2014.

2. The law, facts and matters involved did not and do not justify the Initial Decision 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 the Regulation. In particular, but without prejudice to the generality of the plea.
 - (a) The Council has failed, in making the Initial Decision, to take into account, or to take properly and sufficiently into account the fact that any restriction on the right of access must be applied strictly and narrowly interpreted. There is a strong public interest in transparency and accountability, which the Council has here failed to take, or failed sufficiently to take, into account. The Regulation is intended to give the widest possible public access to documents from the institutions. There are exceptions, but such exceptions must be interpreted and applied strictly (see e.g. Case T-331/11 *Besselink v Council of the European Union* [2014] 1 CMLR 28, para 28 and cases there cited; Case C-266/05 P *Sison v Council of the European Union* [2007] ECR I-01233 and Joined Cases C-39/05 P & C-52/05 P *Sweden v Council of European Union* [2008] ECR I-4723, and Case T-63/10 *Jurašiniović v Council* (EGC, 3 October 2012)).
 - (b) The reasoning provided by the Council in the Initial Decision Letter is inadequate and does not comply with the legal requirements. The Council's explanation is no more than broad brush assertion, and fails to set out facts and evidence to justify the conclusions reached. There is no or insufficient material and/or explanation in the Initial Decision Letter, setting out what precisely the alleged harm would be from disclosure of this particular document, why the alleged harm is more than hypothetical, and why such harm is of a nature to bring the disclosure of the Document within Article 4(1)(a) third indent.
 - (c) The Initial Decision Letter refers to (1) the Document containing a letter from a judicial authority in Ukraine, (2) its having been transmitted by the European External Action Service ("EEAS"), (3) its having a "sensitive nature" and (4) the request of the Ukrainian authorities not to disclose the information contained in the letter.
 - (d) None of these four matters, or anything which is said to flow from them, justify the Initial Decision, which is wrong.
 - (e) Matters (1) and (2) are irrelevant, and cannot justify non-disclosure, either alone or in combination with any other matter.

- (f) Matter (3), the mere assertion that the Document is of a “sensitive nature”, takes the matter no further forward. The treatment of sensitive documents is expressly dealt with in Article 9 of the Regulation, which defines “sensitive documents” by reference to their particular classification and contents (Article 9(1)). In addition, the 9th recital in the preamble to the Regulation emphasises that it is the “highly sensitive content” of such documents which justifies the requirement that they be given special treatment. Article 9(4) further provides that an institution which decides to refuse access to a sensitive document shall give reasons for its decision. The Initial Decision Letter does not refer to or rely on Article 9 at all, let alone provide reasons from which it is possible to understand and ascertain, first, whether the Document requested does in fact fall within the sphere covered by the exception in Article 9 and, second, whether the need for protection relating to that exception is genuine (*Sison v Council of the European Union*, above). No relevant document classification is alleged. The Initial Decision Letter instead refers generally to the “sensitive nature” of the document; this is far too vague to found such a decision. In particular a document may be of a “sensitive nature” without falling within the definition in Article 9(1), or, for that matter, without its disclosure undermining the protection of the public interest as regards international relations, which is what is required for the Article 4(1)(a) third indent exception.
- (g) The Initial Decision therefore appears to be entirely reliant on matter (4), namely the apparent request not to disclose from some unidentified and unnamed “Ukrainian Authorities”. The Applicant does not recognise the so-called “interim regime” in Kiev, but even if some properly constituted authority in Ukraine did so request, reliance on such request to make the Initial Decision is wrong as a matter of law. Ukraine is not a Member State, and its “request” cannot be permitted to act as a veto on disclosure. Even a Member State does not have such a right of veto. Article 4(5) of the Regulation only refers to a right for a Member State to request, and such a right does not constitute a veto. There is no such equivalent right to request for a non-Member State under the Regulation or at all. Even if there was, it would not be a veto.
- (h) Further, even a request by a Member State has to be reasoned to be taken into account. An unreasoned objection by a Member State is ineffective (C-64/05 P *Sweden v Commission of the European Communities* [2007] E.C.R. I-11389). The position of a non-Member State cannot be stronger than that of a Member State. No reasoning from Ukraine is referred to in the Initial Decision Letter, and there is no or no valid reason for any such request. The assertions in the Initial Decision Letter that disclosure would negatively affect the climate of confidence among the relevant actors, and would hence prejudice the EU’s relations with Ukraine, quite apart from being vague in the extreme, can be seen to be no more than acknowledgment that the Initial Decision involves the so-called “interim regime” in Kiev having an impermissible and illegal veto on disclosure.
- (i) The Applicant refers to the matters set out in the Initial Application, which matters are hereby repeated so far as relevant. The supposed “authorities” in Kiev are engaged in an illegitimate attack on the legitimate President of Ukraine and his family. Any request that the Document be not disclosed made by those authorities would be baseless and/or made for an illegitimate purpose, and should not be taken into account in making this important

decision which engages important public and private interests requiring disclosure. Although the exceptions in Article 4(1)(a) of the Regulation are mandatory, the Applicant's interests, and the public interests, in disclosure are not irrelevant, and are extremely strong, as appears from the Initial Application itself, and also from the Applicant's application for the annulment of the Sanctions Decision. In particular, but without prejudice to the generality of the submission, there is no document so far disclosed by the Council which could even conceivably provide a basis for the Sanctions Decision. If there is any such basis, which is denied, it must therefore be contained in the Document. It is thus essential for the Applicant to be provided with access to the Document to enable him properly to defend himself and to challenge the Sanctions Decision, and more generally to protect his reputation, which is obviously being severely damaged by the Sanctions Decision. There is a strong public interest, based on transparency, accountability, fairness, the rights of a defendant, and the provision of a fair trial, in the Applicant having access to the Document, and (contrary to decisions such as *Sison*, above) such considerations are relevant here. The Applicant needs the disclosure sought. Access to it in this context is a fundamental human right, applicable in the European Union under the Lisbon Treaty. The illegitimate and apparently unreasoned objection of the Ukrainian authorities to disclosure of the Document in these circumstances should lead to the supposed objections of Ukraine being discounted entirely. The Council is here dealing with a case that involves a misuse of power.

- (j) In the present case, the objection of Ukraine can and should be overridden without causing damage properly falling with Article 4(1)(a) of the Regulation. If that is not the case, the objectives and practical effect of the Regulation and related Community provisions would be able to be frustrated by the say so of a non-Member State.
 - (k) In any event, even if the Document is properly not disclosed as a whole, the Council is required to consider granting partial access to the Document by redacting any parts that might genuinely and properly require to be concealed (Article 4(6) of the Regulation). The Document could, if it is truly necessary not to disclose the whole document, be redacted in a proportionate manner. The Council has failed to consider this and/or failed to provide access to an appropriately redacted version of the Document, and/or failed to give reasons why a redacted version of the Document cannot or should not be provided.
3. The law, facts and matters involved do not justify the conclusion that disclosure of document MD 65/14 is also justified by the supposed interests of unnamed other individuals outweighing the Applicant's, and the public, interest in disclosure for the purposes of Article 4(1)(b) of the Regulation or for any other reason. In particular, but without prejudice to the generality of the plea.
- (a) The Council has failed to take into account, or to take properly and sufficiently into account, the fact that any restriction on the right of access must be applied strictly and narrowly interpreted. There is a strong public interest in transparency and accountability which the Council has failed to take, or failed sufficiently to take, into account.

- (b) The Applicant's interests, and the public interest, in disclosure are extremely strong, as appears from the Initial Application itself, and also from the Applicant's application for the annulment of the Sanctions Decision (a copy of which Application, without exhibits, is attached/enclosed for convenience). The contents of those applications are repeated so far as material. In particular, but without prejudice to the generality of the submission, as already mentioned above, there is no document so far disclosed by the Council which could even conceivably provide a basis for the Sanctions Decision. If there is any such basis, which is denied, it must therefore be contained in the Document. It is thus essential for the Applicant to be provided with access to the Document to enable him properly to defend himself and to challenge the Sanctions Decision, and more generally to protect his reputation. As already mentioned, there is a strong public interest, based in fairness, the rights of a defendant and the provision of a fair trial, in the Applicant having access to the Document. The Applicant needs the disclosure sought. Access to it in this context is a fundamental human right, applicable in the European Union under the Lisbon Treaty. The illegitimate and apparently unreasoned objection of the Ukrainian authorities to disclosure of the Document in these circumstances should lead to the supposed objections of Ukraine being discounted entirely. The Council is here dealing with a case that involves a misuse of power.
- (c) The supposed interests, if any, of other unnamed persons whose personal data is supposedly mentioned in the Document, cannot outweigh the strong personal and public interest in disclosure being made. If, which is not admitted, there is any such personal data:
- i. The Council is required to consider granting partial access to the Document by redacting any parts that might genuinely and properly require to be concealed by reason of third party interests (as appears from Article 4(6) of the Regulation). The Council has failed to consider this and/or failed to provide access to an appropriately redacted version of the Document. The Document could, if truly necessary, be redacted in a proportionate manner.
 - ii. The Document may itself be the subject of access requests by the people concerned; if that is the case, there can be no proper basis for not disclosing it or disclosing parts of it.
 - iii. There is no specific damage to such persons that is alleged by the Council to flow from disclosure of the Document, and certainly none to outweigh the interests of the public and the Applicant in disclosure of the Document.
 - iv. The Council has failed to identify the people concerned and even the nature of the information in question, and thus the Applicant is unfairly deprived of the possibility of making more detailed submissions as to these matters. In those circumstances, the interests if any must be deemed to be of no or negligible weight.
 - v. The Ukrainian authorities would have provided the information concerned to the Council in the knowledge that such information might or would be acted on, and they must have envisaged that such information would become public at some stage. The Ukrainian authorities were content to use the third parties' information for their own purposes and to disclose it.

- vi. The reasoning provided by the Council is inadequate and does not comply with legal requirements. The Council's explanation is no more than broad brush assertion, and fails to set out facts and/or evidence to justify the conclusions reached.
 - vii. There is no or insufficient material and/or explanation as to why the alleged harm is more than hypothetical, and why it outweighs the public interests in disclosure.
- (d) In any event, it is to be inferred that the Document has been widely distributed within the EU Institutions and amongst the Member States, although that is not acknowledged in the Initial Decision Letter. Such distribution, the extent of which we request be disclosed to us, with proper particulars, is a further reason undermining the Council's assertion that the private interests of other people referred to warrant non disclosure.

Yours sincerely

Joe Hage
Partner
Joseph Hage Aaronson LLP
Tel: +44 (0)2078518888
Email: jhage@jha.com

[Enc]