



**Brussels, 3 November 2014
(OR. en)**

15034/14

**INF 301
API 121**

NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 30/c/04/14

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 20 August 2014, registered on the same day ([Annex 1](#));
- message sent by the GSC dated 9 September 2014 and reply by the applicant dated 17 September 2014, as well as message sent by the GSC dated 25 September 2014 and reply sent by the applicant dated 29 September 2014 ([Annex 2](#));
- reply from the GSC dated 6 October 2014 ([Annex 3](#));
- confirmatory application dated 27 October 2014 and registered the same day ([Annex 4](#)) (not including the enclosed initial request, the narrowed request and the initial decision which can be found in Annexes 1 to 3 of this document).

[E-mail message sent to access@consilium.europa.eu]

From: **DELETED**

Sent: Wednesday, August 20, 2014 16:20

To: SECRETARIAT DGF Access

Subject: Strictly Private and Confidential - Urgent - Application for Access to Documents

Dear Sirs,

Please see the attached letter of today's date.

We should be grateful if you would please confirm receipt by return.

A hardcopy will follow by post.

Yours faithfully

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20 August 2014

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

Email:
access@consilium.europa.eu

Our ref: JXH/DSS/CK/ROS3.2
Your ref:

Dear Sirs

Request for Documents under Regulation (EC) 1049/2001, relating to Council Decision 2014/512/CFSP and Council Regulation (EU) 833/2014.

We, **DELETED**, a limited liability partnership registered in England & Wales with registered number **DELETED**, with our registered office at the above address in the United Kingdom, by this letter make the application for access to documents detailed below under Article 6 of Regulation (EC) 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).

We are the duly appointed legal representative of **DELETED** and are acting for **DELETED** in relation to Council Decision 2014/512/CFSP ("the Decision") and Council Regulation (EU) 833/2014 ("the Regulation"), both of 31 July 2014, concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

We further notify you that, as the legal representative of **DELETED** we have today also made an application, on behalf of **DELETED** to the General Secretariat of the European Council for access to documents pursuant to **DELETED** rights of defence and right to effective judicial protection.

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The Access to Documents Request

1. Our overall request is for access to all documents, as defined in Article 3 of Regulation 1049/2001, held by the Council (including all such documents drawn up or received by the Council) (a) containing or identifying any fact or circumstance relied on as justifying the Decision or Regulation, (b) containing or identifying any evidence or information on which assessments underpinning the Decision and Regulation were based, (c) which are or would have been otherwise relevant to the making or not making of the Decision and the Regulation.
2. Without prejudice to the generality of the request in paragraph 1, we specifically request access to all relevant reports, minutes, opinions, submissions, analyses and advices, relating to:
 - 2.1. the matters set out in the recitals to the Decision, and in particular the assertions of fact and law contained in recitals (1), (5), (6), (7), (8), (9) and (12);
 - 2.2. the matters set out in (including in particular the assertions of fact and law contained in) the recitals to the Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, which Decision is referred to in recital (2) to the Decision;
 - 2.3. any analysis of the short, medium and long-term impact which the measures imposed by the Decision and the Regulation were expected to have upon the oil exploration and production industry in Russia and relevant EU exporters which were expected to be affected by the said measures;
 - 2.4. the operations of, and anticipated impact of the said measures upon, **DELETED** and its subsidiaries;
 - 2.5. the request by the Council dated 21 March 2014 to the Commission and Member States to prepare possible targeted measures, and documents prepared by the Commission and/or the European External Action Service (EEAS) for the Council which set out the preparatory work on targeted measures, in particular in relation to sensitive technologies and the energy sector;
 - 2.6. the reasons for adopting each of the definitions in Article 1 of the Regulation, and for the lack of definition of certain terms, and for the listing of each of the specific technologies listed in Annex II of the Regulation;
 - 2.7. the adoption of Articles 7 and 8 of the Decision and Articles 11 and 12 of the Regulation;
 - 2.8. which Member States voted for the Decision and the Regulation, and the arguments both for and against the measures which were considered by the Council prior to the implementation of the Decision and the Regulation;

- 2.9. other restrictive measures which were contemplated or considered by the Council at the relevant time(s), but not adopted, and the reasons for not adopting such other restrictive measures;
- 2.10. the legality of the Decision and the Regulation;
- 2.11. the legality of Russia's actions in relation to the Ukraine, and the factual basis for such legal analysis of Russia's actions;
- 2.12. the anticipated reaction of the Government of the Russian Federation to the implementation of the measures, and in particular with regard to its foreign policy objectives in relation to the Ukraine;
- 2.13. communications with non EU Member States, in particular the United States of America, regarding restrictive measures under consideration or to be adopted.

We request that the response to this request is provided to the email addresses set out below and that all documents are sent in machine-readable electronic format.

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Yours faithfully

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[E-mail message sent to the applicant on 9 September 2014, 15:42]

From: SECRETARIAT DGF Access
Sent: Tuesday, September 9, 2014 15:42
To: **DELETED**
Subject: Ref. Your request for access to documents dated 20 August 2014 (ref. 14/1424)

Dear Sirs,

We refer to your request for access to documents dated 20 August 2014 and registered under reference number 14/1424.

It appears from a first reading of your request that almost all documents held by the General Secretariat concerning the Union's relations with the Russian Federation since last summer potentially fall within the scope of your application. However, it is not possible for us to ascertain this precisely. Pursuant to Article 6(2) of Regulation 1049/2001, we therefore ask you to clarify your request. You may wish to revert to the Internet Register, which you will find at <http://register.consilium.europa.eu>.

Once your request has been clarified, it may well be possible that it concerns a very large number of documents. Moreover, it appears from the first reading that the documents you seek are held by many different services within the General Secretariat of the Council. The General Secretariat therefore reserves the right to invoke Article 6(3) once the precise scope of your request is clear.

You may in any event be interested to consult the relevant website of the Council <http://www.consilium.europa.eu/homepage?lang=en>, where you will find ample information on the EU's policies vis-à-vis Russia.

We look forward to hearing from you with regard to the above, in order for us to be able to process your request.

Yours sincerely,

Transparency and Access to Documents

[E-mail message sent to access@consilium.europa.eu]

From: **DELETED**
Sent: Wednesday, September 17, 2014 19:58
To: SECRETARIAT DGF Access
Subject: Request for access to documents dated 20 August 2014 (ref. 14/1424) **DELETED**

Dear Sirs,

Please see letter attached.

Please kindly acknowledge receipt.

Yours faithfully

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17 September 2014

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

Email: access@consilium.europa.eu

Our ref: JXH/DSS/CK/ROS3.2
Your ref: 14/1424

Dear Sirs

Reference 14/1424: Request for Documents under Regulation (EC) 1049/2001, relating to Council Decision 2014/512/CFSP and Council Regulation (EU) 833/2014.

We refer to email dated 9 September in response to our request for access to documents dated 20 August 2014 which is registered under reference number 14/1424.

You have invited us to clarify our request pursuant to Article 6(2) of Regulation 1049/2001. We do not accept that the scope of our request was insufficiently precise for it to be considered. Nevertheless, we clarify that in relation to our request we would like copies of the documents set out below.

Having regard to documents which are accessible on the Public Register of Council Documents ("public documents"), we request the following documents:

- A. Documents referred to by document number in public documents but which are not accessible via the Public Register listed in the attached Annex 1.
- B. Documents and classes of documents which are referred to in public documents:
 - 1. Minutes or other written record of the restricted session of the extraordinary meeting of the Permanent Representatives held on 28 April 2014 about the Ukraine and all reports,

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minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the meeting.

2. Minutes or other written record of the restricted session about the Ukraine of the 2495th meeting of the Permanent Representatives Committee held on 30 April 2014 and 5 May 2014 relating to preparation of the Council Meeting (Foreign Affairs) on 12 May 2014 and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the meeting including, but not limited to:
 - 2.1. The options presented by the European External Action Service ("EEAS");
 - 2.2. The proposals put forward by two delegations;
 - 2.3. Revised Commission reflection paper on the "Legal Consequences of the Illegal Annexation of Crimea by the Russian Federation and Proposals for Economic, Trade and Financial Restrictions";
 - 2.4. Earlier drafts of the said Commission reflection paper;
 - 2.5. Comments of Member States upon the said Commission reflection paper;
 - 2.6. Revised country fiches on the impact of stage 3 restrictive measures distributed by the Commission;
 - 2.7. Any earlier versions of the said country fiches;
 - 2.8. Comments to the Commission by Member States regarding country fiches and/or the impact of stage 3 restrictive measures;
 - 2.9. The revised proposal by the EEAS for amending the legal criteria for the listing of persons and/or entities subject to restrictive measures;
 - 2.10. The further revised proposal for amending the legal criteria for the listing of persons and/or entities subject to restrictive measures prepared by the EEAS for the meeting of the Permanent Representatives Committee on 7 May 2014.
3. The agenda and minutes of the meeting of the Permanent Representatives Committee on 7 May 2014 and all reports, minutes, opinions, submissions, analyses and advices relating to Ukraine and restrictive measures.
4. Minutes or other written record of the session about the Ukraine of the 2504th meeting of the Permanent Representatives Committee held on 1, 3 and 7 July 2014 and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the meeting including, but not limited to:
 - 4.1. The presentation by the EEAS "on the situation on the ground and on the degree of fulfilment of the four elements listing in the European Council's conclusions";
 - 4.2. The presentation by the Commission "of the latest evolution with regard to the gas negotiations and the efforts to bring Russia and Gazprom to the negotiating table";
 - 4.3. The options presented by the Commission "regarding financial co-operation with Russia, if further sanctions were decided";
 - 4.4. The options presented by the EEAS "if further sanctions were to be decided";
 - 4.5. The updated presentation by the EEAS on the situation in Ukraine at the meeting on 7 July 2014;

- 4.6. The assessment by the European Union Intelligence Analysis Centre “of the security situation and possible evolutions on the ground”;
 - 4.7. The presentation by the Commission on possible options regarding financial co-operation with Russia;
 - 4.8. The note of further possible measures prepared by the EEAS and the Commission.
5. Minutes or other written record of the restricted session of the 2505th meeting of the Permanent Representatives Committee held on 9 and 11 July 2014 about the Ukraine and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the meeting
 6. Minutes or other written record of the restricted session of the 2506th meeting of the Permanent Representatives Committee held on 15 July 2014 about the Ukraine and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the meeting.
 7. All documents prepared by the Commission and the EEAS which set out the preparatory work on targeted measures including proposals for taking action, particularly in relation to sensitive technologies and the energy sector and the reasons for selecting the oil sector in preference to other sectors.
 8. All documents relating to any analysis of the short, medium and long-term impact which the measures imposed by the Decision and the Regulation were expected to have upon the oil exploration and production industry in Russia and relevant EU exporters which were expected to be affected by the said measures.
 9. All documents relating to the operations of, and anticipated impact of the restrictive measures upon, **DELETED** and its subsidiaries.
 10. All documents relating to the adoption of Articles 7 and 8 of the Decision and Articles 11 and 12 of the Regulation.
 11. All documents which relate to which Member States voted for the Decision and the Regulation, and the arguments both for and against the measures which were considered by the Council prior to the implementation of the Decision and the Regulation.
 12. All documents prepared by the Council, Commission, EEAS or High Representative of the European Union for Foreign Affairs and Security Policy relating to the monitoring and assessment of the restrictive measures and relating to preparatory work and for proposals for further measures considered in the period from August to September 2014, particularly in relation to sensitive technologies.
 13. Minutes or other written record of the restricted session of the 2509th meeting of the Permanent Representatives Committee held on 10 September 2014 about the Ukraine

and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the meeting.

We request that the response to this request is provided to the email addresses set out below and that all documents are sent in machine-readable electronic format.

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Yours faithfully

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[E-mail message sent to the applicant on 25 September 2014]

From: SECRETARIAT DGF Access

Sent: Thursday, September 25, 2014 13:07

To: **DELETED**

Subject: RE: Request for access to documents dated 20 August 2014 (ref. 14/1424) **DELETED**

Dear Sirs,

Once again we would like to acknowledge the receipt of your letter dated 17 September 2014 and referring to your request for public access dated 20 August 2014.

The clarifications given in the letter should enable the General Secretariat to ascertain precisely which documents you wish to request public access to. In this context we kindly ask you to note that the deadlines mentioned in Article 7 of Regulation 1049/2001 will be calculated starting from the date following the date of your clarification letter, i.e. starting from 18 September 2014, as the letter was received after office hours on 17 September 2014.

On the basis of your letter, the General Secretariat has started the identification of the documents concerned by your request. Please be assured that we will do our utmost to be able to reply to you as soon as possible.

Yours sincerely,

Transparency and Access to Documents

[E-mail message sent to access@consilium.europa.eu]

From: [DELETED]

Sent: Monday, September 29, 2014 15:20

To: SECRETARIAT DGF Access

Subject: RE: Request for access to documents dated 20 August 2014 (ref. 14/1424) [DELETED]

Dear Sirs,

Please see letter attached.

Yours faithfully,

[DELETED]

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29 September 2014

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

Email: access@consilium.europa.eu

Our ref: JXH/DSS/CK/ROS3.2
Your ref: 14/1424

Dear Sirs

Reference 14/1424: Request for Documents under Regulation (EC) 1049/2001, relating to Council Decision 2014/512/CFSP and Council Regulation (EU) 833/2014.

Thank you for your email dated 25 September in which you confirm that on the basis of our letter the General Secretariat has started the identification of the documents concerned by our request. You also state that the 15 day deadline runs from the date of our clarified request although we note that you state that you will do your utmost to reply to our letter as soon as possible.

We do not accept that our original request was insufficiently precise for it to be considered, nor do we accept that it would be reasonable for you to require a further 15 days from the date of our clarification letter to reply to it.


As you are aware, we are the legal representative of DELETED and are acting for DELETED in relation to Council Decision 2014/512/CFSP and Council Regulation (EU) 833/2014, both of 31 July 2014, concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. We will need to serve DELETED application for the annulment of those acts insofar as they concern the operations of DELETED by 10 October 2014 and access to the documents requested is required in connection with that application. As you are also aware we have made a similar request for access to documents pursuant to DELETED rights of defence and right to effective judicial protection to which we have received no substantive reply. The failure of the Council to provide access to the requested documents by either of these routes prior to this date is highly

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prejudicial to **DELETED** and this failure will be drawn to the attention of the General Court in due course.

In the circumstances, we insist upon a speedy response to our request by no later than this Friday 3 October.

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Council of the European Union
General Secretariat

Directorate-General Communication and Document Management
Directorate Document Management
Transparency and Access to Documents Unit

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Brussels, 6 October 2014

Ref. 14/1424-bd/mi/dm

Dear **DELETED**,

Thank you for your clarified request for access to documents which the General Secretariat received on 17 September and registered on 18 September 2014.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents¹ (hereafter the "Regulation") and specific provisions of the Council's Rules of Procedure.² Without prejudice to the fact that your request concerns a very large number of documents within the meaning of Article 6(3) of the Regulation, the General Secretariat has endeavoured, as per your request, to provide you with a response as soon as possible and has come to the conclusion as set out below.

We have identified the following documents held by the Council as falling within the scope of your request (for ease of relevance, in the remainder of this decision we refer to the numbers in the left column in square brackets):

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.

1	MD 45/14	(March) Draft Council conclusions on Ukraine
2	MD 98/14	Draft Council Conclusions on Ukraine
3	MD 111/14	(+ REV 1) Draft Council conclusions on Ukraine
4	MD 158/14	Ukraine - revised draft Council Decision
5	MD 169/14	(+REV1) Draft Council conclusions on Ukraine
6	ST 6303/14	Draft Council conclusions on Ukraine
7	ST 6737/14	Draft Council conclusions on Ukraine
8	ST 6761/14	Draft Council conclusions on Ukraine
9	ST 7780/14	Draft Council Decision + Regulation
10	ST 7781/14	Draft Council conclusions on Ukraine
11	ST 7782/14	(+ REV 1) Draft Council conclusions on Ukraine
12	ST 7824/14	Draft Council conclusions on Ukraine
13	ST 8878/14	(+ REV 1) Draft Council conclusions on Ukraine
14	ST 8893/14	Draft Council conclusions on Ukraine
15	ST 9612/14	Draft Council conclusions on Ukraine
16	ST 9612/14 REV 1	Draft Council conclusions on Ukraine
17	ST 9735/14	Draft Council conclusions on Ukraine
18	ST 11111/14	Draft Council conclusions on Ukraine
19	ST 11176/14	Draft Council conclusions on Ukraine
20	ST 11224/14	Draft Council conclusions on Ukraine
21	ST 11857/14	Relations with Russia I/A note
22	ST 11978/14	Relations with Ukraine: Statement for the minutes of the Council
23	ST 12080/14	Draft Council conclusions on Ukraine
24	ST 12081/14	Draft Council conclusions on Ukraine
25	ST 12493/14	Draft Council conclusions on Ukraine
26	ST 12504/14	(+REV 1) Draft Council conclusions on Ukraine
27	ST 12511/14	Draft Council conclusions on Ukraine
28	ST 12977/14	EU Sanctions Mechanism
29	MD 73/14	Line to take for the Heads of Delegations, on European Council Conclusions on developments in Ukraine

30	MD 83/14	Meetings and contacts with Russia in light of the Ukraine crisis and Conclusions by the European Council – internal Commission/EEAS guidelines
31	MD 108/14	Non-paper on EU-Russia Expert discussions on the potential impact of the Eastern Partnership Association Agreements on Russia's Economy
32	MD 57/14 (PSC)	Identification of possible EU engagement in the field of security in UA
33	MD 129/14	Commission non paper on bilateral agreements with Ukraine and Russia
34	MD 130/14	(+ REV 1, 2, 3, 4) Non paper: Draft Guidelines on Contacts with Crimea/Sevastopol's formal institutions and de facto authorities
35	MD 138/14	Ukraine: EU projects in Crimea
36	MD 138/14 (COEST)	Information Note to COEST: Ukraine - EU projects in Crimea
37	MD 178/14	Table : Russia projects July 2014
38	ST 10749/14	EU's non-recognition policy regarding Crimea
39	ST 12078/14	(+ REV 1) Joint Staff Working Document - Information Note to EU business operating and/or investing in Crimea/Sevastopol
40	EAS/0478/14	EEAS proposal for amending the criteria

Outcomes of the meetings of the Permanent Representatives Committee (Part 2):

41	ST 7600/14	16 March 2014,
42	ST 8807/14	9 April 2014
43	ST 9349/14	28 April 2014
44	ST 9350/14	30 April and 5 May 2014
45	ST 9585/14	7, 8, 12 May 2014
46	ST 9900/14	15 May 2014
47	ST 11101/14	23 June 2014
48	ST 11495/14	1 July 2014
49	ST 11700/14	9 July 2014
50	ST 11897/14	15, 17, 21, 22 July 2014
51	ST13118/14	10 September 2014

52	MD 162/14	Proposal from EEAS: Draft Council Decision
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53	MD 164/14	Proposal from Commission: Draft Council Regulation
54	MD 164/14 ADD 1	Proposal from Commission: Annexes to draft Council Regulation
55	MD 166/14 ADD 2	Draft Addendum to Council Decision and Regulation
56	MD 159/14	Proposal from EEAS: Draft Council Decision
57	MD 159/1/14 REV 1	Proposal from EEAS: Draft Council Decision
58	MD 159/2/14 REV 2	Proposal from EEAS: Draft Council Decision
59	MD 159/3/14 REV 3	Proposal from EEAS: Draft Council Decision
60	MD 160/14	Joint Proposal from Commission and HR: Draft Council Regulation
61	MD 160/14 REV 1	Draft Council Regulation
62	MD 160/14 REV 1 (revised)	Draft Council Regulation
63	MD 162/14	Proposal from EEAS: Draft Council Decision
64	MD 162/14 REV 1	Proposal from EEAS: Draft Council Decision
65	MD 162/14 REV 2	Proposal from EEAS: Draft Council Decision
66	MD 163/14	Commission/EEAS Concept paper: Proposal for measures to restrict trade with and investment in Crimea/Sevastopol
67	ST 12246 ADD 1 COR 1 DCL 1	Corrigendum to the Addendum to Council Regulation concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine
68	MD 164/14 REV 1	Proposal from Commission: Draft Council Regulation
69	MD 165/14 REV 1	RESTREINT UE Draft Council Decision
70	MD 165/14 REV 2	Draft Council Decision
71	MD 165/14 REV 3	Draft Council Decision
72	MD 165/14 REV 4	Draft Council Decision
73	MD 166/14 ADD 1	RESTREINT UE Joint Proposal from Commission and HR: Annexes to the Draft Council Regulation
74	MD 166/14	RESTREINT UE Joint Proposal from Commission and HR: Annexes to the Draft Council Regulation
75	MD 166/14 REV 1	Draft Council Regulation
76	MD 166/14 REV 2	Draft Council Regulation
77	MD 166/14 REV 3	Draft Council Regulation
78	MD 167/14	Information on listed institutions
79	ST 9496/1/14 REV 1	Provisional agenda of the meeting of the Permanent Representatives Committee (Part 2) on 7 May 2014

80	CM 3799/14	End of written procedure for the adoption of the Council Decision and Regulation in July 2014
81	ST 12305/14	Joint Council and Commission Declaration on a mechanism to optimize consistency in the application and monitoring of EU restrictive measures
82	ST 12305/1/14	Joint Council and Commission Declaration on a mechanism to optimize consistency in the application and monitoring of EU restrictive measures
83	CM 2544/14	Written procedure for the adoption of the Council Decision and Regulation in April 2014
84	CM 2545/14	Postponement of written procedure for the adoption of the Council Decision and Regulation in April 2014
85	CM 2612/14	Resumption of written procedure for the adoption of the Council Decision and Regulation in April 2014
86	CM 2613/14	End of written procedure for the adoption of the Council Decision and Regulation in April 2014
87	ST 9097/14	Council implementing Decision implementing Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
88	ST 9097/14 ADD 1 DCL 1	Annex to the Council implementing Decision implementing Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
89	ST 9093/14	Council implementing Regulation implementing Regulation(EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
90	ST 9093/14 ADD 1 DCL 1	Annex to the Council implementing Regulation implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
91	ST 9671/14	"I" Item Note
92	ST 9701/14	Note from the Permanent Representatives Committee to Council
93	ST 9637/14	Council Regulation amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

94	ST 9635/14	Council implementing Regulation implementing Regulation(EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
95	ST 9631/14	Council Decision amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
96	ST 9631/14 ADD 1 DCL 1	Addendum to Council Decision amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
97	ST 9631/14 COR.1	Corrigendum to Council Decision amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
98	CM 3561/14	(+ COR 1) Written procedure for the adoption of the Council Decision and Council Implementing Regulation in July 2014
100	CM 3597/14	End of written procedure for the adoption of the Council Decision and Council Implementing Regulation in July 2014
101	ST 11701/14	Council Decision amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
102	ST 11701/14 ADD 1 DCL 3	Addendum to Council Decision amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
103	ST 11702/14	Council Implementing Regulation implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
104	ST 11702/14 ADD 1 DCL 1	Addendum to Council Implementing Regulation implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
105	CM 3689/14	Written procedure for the adoption of the Council Decision and Regulation in July 2014

106	CM 3706/14	End of Written procedure for the adoption of the Council Decision and Regulation in July 2014
107	ST11980/14	Joint Proposal from Commission and HR: Draft Council Regulation
108	ST 11981/14	Council Regulation amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
109	ST 11979/14	Council Decision amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
110	CM 3731/14	Written procedure for the adoption of the Council Decision, Council Regulation and Council implementing Regulation in July 2014
111	CM 3752/14	End of Written procedure for the adoption of the Council Decision, Council Regulation and Council implementing Regulation in July 2014
112	ST 12127/14	Joint Proposal from Commission and HR: Draft Council Regulation
113	ST 12125/14	Council Decision amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
114	ST 12125/14 ADD 1 DCL 1	Addendum to Council Decision amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
115	ST 12126/14 ADD.1 DCL 1	Addendum to Council Implementing Regulation implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
116	ST 12126/14	Council Implementing Regulation implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
117	ST 12128/14	Council Regulation amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
118	ST 9634/14	Joint Proposal from Commission and HR: Draft Council Regulation

- 119 ST 12247/14 Council Decision amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
- 120 ST 12247/14 ADD 1 DCL 1 Addendum to Council Decision amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
- 121 ST 12248/14 Council Implementing Regulation implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
- 122 ST 12248/14 ADD 1 DCL 1 Addendum to Council Implementing Regulation implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
- 123 CM 3775/14 COR 1 Corrigendum to Written procedure for the adoption of two Council Decisions, Council Regulation and Council implementing Regulation in July 2014
- 124 CM 3775/14 COR 1 REV 1 Revised Corrigendum to Written procedure for the adoption of two Council Decisions, Council Regulation and Council implementing Regulation in July 2014
- 125 CM 3775/14 Written procedure for the adoption of two Council Decisions, Council Regulation and Council implementing Regulation in July 2014
- 126 CM 3787/14 End of Written procedure for the adoption of two Council Decisions, Council Regulation and Council implementing Regulation in July 2014
- 127 ST 12206/14 ADD.1 Addendum to Joint Proposal from Commission and HR: Draft Council Regulation
- 128 ST 12206/14 Joint Proposal from Commission and HR: Draft Council Regulation
- 129 ST 12205/14 Council Decision amending Decision 2014/386/CFSP concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol

- 130 ST 12207/14 Council Regulation amending Regulation (EU) No 692/2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol
- 131 ST 12207/14 REV 1 Revised Council Regulation amending Regulation (EU) No 692/2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol
- 132 CM 3791/14 Written procedure for the adoption of Council Decision and Council Regulation in July 2014
- 133 ST 12245/14 Council Decision concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine
- 134 ST 12245/14 ADD 1 REV 1 DCL 1 Revised Addendum to Council Decision concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine
- 135 ST 12246/14 ADD 1 REV 1 DCL 1 Revised Addendum to Council Regulation concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine
- 136 ST 12246/14 COR.3 Corrigendum to Council Regulation concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine
- 137 ST 12246/14 COR.2 Corrigendum to Council Regulation concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine
- 138 ST 12246/14 Council Regulation concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine
- 139 ST 9635/14 ADD 1 DCL 1 Addendum to Council implementing Regulation implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

You may have public access to the following documents:

[8], [9], [12], [14], [16] to [18], [21], [23], [24], [27], [28], [39], [41] to [51], [67], [79] to [106], [108] to [111], [113] to [117], [119] to [126] and [129] to [139].

As regards documents numbered [1] to [3], [5] to [7], [10] to [11], [13], [15], [19], [20], [25] and [26] in the above list, these are drafts of Council conclusions on the Ukraine and the Crimea conflict. Releasing these documents to the public, especially at this sensitive time, would allow third states to assess the level of convergence of positions within the Council and potentially exploit differences. For this reason, public access is therefore refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed for each of these documents whether it would be possible to provide partial access but determined that doing so would enable third states to assess which parts of the conclusions were most contentious. This would be detrimental to the unity of the Council vis-à-vis such third states. In each case the exception thus covers the entire document.

Document [4] MD158/14 COEST comprises the draft Council Decision on the signing and provisional application of part of the Association Agreement between the EU and Euratom on the one side, and Ukraine on the other side. Part of the document concerns statements made by the institutions, as well as by one Member State and the Commission response thereto. The General Secretariat considers that release of these draft statements which at that stage were put forward for internal use only as part of deliberations within the Council would seriously undermine future decision making on similar issues. The General Secretariat determines that public release of these statements is not possible in accordance with Article 4(3), second sub-paragraph of the Regulation. Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether the remainder of the document would fall within this exception and decided that public access may be given to pages 1 to 5, inclusive, of the document.

As regards document [22] ST 11978/14, public access cannot be provided since its release would negatively affect the EU's relation with a third state. The General secretariat cannot provide further reasons without revealing the content of the document. Public access is therefore refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception but determined that this is not the case.

As regards document [29] MD 73/14 COEST, some of the information in the document cannot be released since it could create diplomatic difficulties with a third state. Public access to this information is therefore refused on the basis of Article 4(1)(a), third indent of the Regulation. Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception and established that the remainder of the document may be released to the public.

Document [30] MD 83/14 COEST comprises internal Commission/EEAS guidelines as regards meetings and contacts with Russia in light of the crisis in the Ukraine. In order for these internal guidelines to be effective, it is important that they remain shielded from scrutiny by the third state involved. For this reason, public disclosure would be detrimental to the Union's ability to conduct diplomacy in this sensitive area. For this reason, the Council considers that public disclosure is not possible (Article 4(1)(a), third indent: protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception but determined that this is not the case.

Document [31] MD 108/14 COEST comprises a non-paper on EU-RUSSIA Expert discussions on the potential impact of the Eastern Partnership Association Agreements on Russia's Economy. This document reflects discussions held by the EEAS with the Russian side on a topic of intense sensitivity. The Council believes that public release of the document would, at this stage and in the light of Russia's general views of integration in Eastern Europe, be detrimental to EU-Russian relations. Public access is therefore refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Moreover, the cover note (doc. MD108a/14 COEST) provides names of officials in the EEAS which are personal data covered under Regulation 45/2001.³ This information is protected pursuant to Article 4(1)(b) of Regulation 1049/2001. Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception and has determined that the exception does not apply to the remainder of the cover note .

Document [32] MD 57/14 PSC concerns the identification of possible EU engagement in the field of security in the Ukraine. Providing public access to this document at this stage could cause difficulties both for the government of Ukraine and for EU relations with the Ukraine and third states. For this reason, the Council considers that public disclosure is not possible (Article 4(1)(a), third indent: protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception but determined that this is not the case.

Document [33] MD 129/14 COEST sets out details of the EU's non-recognition policy regarding Crimea, release of which would be detrimental to the EU's relations with a third state. For that reason public access is refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception. On this basis, public access may be given to those parts which are not covered by it.

3 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, OJ 2001 L8/1.

Document [34] 130/14 COEST (and its revised versions) sets out details of the EU's non-recognition policy towards the illegal annexation of Crimea/Sevastopol, release of which would be detrimental to the EU's relations with a third state. For that reason public access is refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception but determined that this is not the case.

Documents [35] MD 138/14 COEST and [36] MD 138/14 COEST concern an information note from the Commission's Directorate General for Development and Cooperation (DEVCO) to the Eastern Europe and Central Asia Working Party and the Annex to that note, respectively. Document [36] is the annex to document [35]. The last paragraph of document [35] contains information which, if released, could damage relations with a third country and/or actors within that country. The same is true for the corresponding part of document [36] (its point 13). For these reason, the Council considers that public disclosure of either document is not possible (Article 4(1)(a), third indent: protection of the public interest as regards international relations). Moreover, document [35] provides names of officials in the EEAS which are personal data covered under Regulation 45/2001. This information is protected pursuant to Article 4(1)(b) of Regulation 1049/2001. Pursuant to Article 4(6) of the Regulation, public access is granted to the remaining parts of these two documents which are not covered by the above-mentioned exceptions.

Document [37] MD178/14 is an internal Commission document that was shared with the Member States providing information on developments in programming of EU funds in Russia and project implementation. Some of the data in the document have changed in response to events. Moreover, the data in the document were not definitive. Releasing the document to the public could negatively affect relations with the Russian Federation. Public access is therefore refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception but determined that this is not the case.

Document [38] ST10749/14 is a note from COEST to Coreper setting out details of the EU's non-recognition policy regarding Crimea, release of which would be detrimental to the EU's relations with a third state. For that reason public access is refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception. On this basis, public access may be given to the parts of the document not covered by the exception.

Document [40] CFSP/EAS/0478/14 is a COREU note originating from the EEAS, classified RESTREINT UE and concerning options relating to the Crimea crisis. The classification means that the release of the information contained in the document could be disadvantageous to the interests of the European Union or of one or more of the Member States.⁴ Providing public access to this note would enable third countries to gain insights in how far the EU is willing to go in its sanctions policy. Public access is therefore refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception but determined that this is not the case.

Documents [52], [53], [54], [55], [56], [57], [58], [59], [60], [61], [62], [63], [64], [65], [66], [68], [70], [71], [72], [75], [76], [77] and [78] are all meeting room documents pertaining to the adoption of the Union's legislation imposing restrictive measures pursuant to the crisis in Ukraine. The Council has checked each of these documents individually but found that public release of any of them would enable third countries to assess the differences between the proposals for sanctions and the final outcome. This would enable third countries to determine to what extent the Union is prepared to go with its restrictive measures policy. Revealing that information would be detrimental to the Union's ability to use restrictive measure to their maximum effect. For this reason, public access is refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed for each document whether any part of it would not fall within this exception but determined that this is not the case.

Documents [69], [73] and [74] are all meeting room documents pertaining to the adoption of the Union's legislation imposing restrictive measures pursuant to the crisis in Ukraine. These documents are classified RESTREINT UE. The Council has checked each of these documents individually but found that public release of any of them would enable third countries to assess the differences between the proposals for sanctions and the final outcome. This would enable third countries to determine to what extent the Union is prepared to go with its restrictive measures policy. Revealing that information would be detrimental to the Union's ability to use restrictive measure to their maximum effect. For this reason, public access is refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed for each document whether any part of it would not fall within this exception but determined that this is not the case.

⁴ Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU), Official Journal L 274, 15.10.2013, p. 1.

Documents [107], [112], [118], [127] and [128] are all proposals by the Commission and the High Representative pertaining to the adoption of the Union's legislation imposing restrictive measures pursuant to the crisis in Ukraine. The Council has checked each of these documents individually but found that public release of any of them would enable third countries to assess the differences between the proposals for sanctions and the final outcome. This would enable third countries to determine to what extent the Union is prepared to go with its restrictive measures policy. Revealing that information would be detrimental to the Union's ability to use restrictive measure to their maximum effect. For this reason, public access is refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations). Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed for each document whether any part of it would not fall within this exception but determined that this is not the case.

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 reply.⁵

Yours sincerely,

For the General Secretariat

Jakob THOMSEN

Enclosures

⁵ 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 access@consilium.europa.eu]

From: **DELETED**

Sent: Monday, October 27, 2014 14:24

To: SECRETARIAT DGF Access

Subject: Confirmatory application (request number 14/1424) **DELETED**

Dear Sirs,

Please see the attached confirmatory application, in relation to our request for access to documents registered under reference number 14/1424.

Also attached, for your reference, are copies of our initial request for access to documents (20.08.2014), our narrowed request (17.09.2014) and the Council's initial decision (06.10.2014).

Yours faithfully,

DELETED

DELETED

DELETED

27 October 2014

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

By email to
access@consilium.europa.eu

Our ref: JXH/DSS/CK/ROS3.2
Your ref: 14/1424

Dear Sirs

Confirmatory Application Requesting the Council to Reconsider its Decision of 6 October 2014

We refer to our request for access to documents dated 20 August 2014 ("the initial request") and our request for access to documents dated 17 September 2014 ("the narrowed request") (together, "the requests") and to your letter dated 6 October 2014 ("the initial decision"). In accordance with 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 hereby submit a confirmatory application, requesting the Council to reconsider its position in relation to the documents which the Council refused to grant disclosure, in full or in part.¹

We attach, for your reference, copies of the initial request, the narrowed request and the initial decision. For ease of reference, we refer to the documents identified by the Council by the numbering adopted by the Council in the initial decision.

¹ This confirmatory application does not deal with the separate application, raised by our letter of 20 August 2014, by which we requested access to information held by the Council in relation to Council Decision 2015/512/CFSP and Council Regulation (EU) 833/2014, on the basis of our client's rights of defence and right to effective judicial protection.

DELETED

In summary, we seek a reconsideration of the initial decision on five distinct grounds:

First, the Council failed to conduct an adequate search for the documents identified in our initial request and/or our narrowed request.

Secondly, the Council, by its initial decision, failed to undertake a concrete, individual assessment of each of the documents identified as falling within the scope of our requests.

Thirdly, the law, facts and matters involved did not and do not justify the Council's initial decision that disclosure of documents [1]-[3], [5]-[7], [10],[11], [13], [15], [19], [20], [22], [25],[26], [30], [32], [34], [37], [40], [52]-[78], [107], [112], [118], [127] and/or [128] and/or full disclosure of documents [29], [31], [33], [35], [36] and/or [38] 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.

Fourthly, the law, facts and matters involved did not and do not justify the initial decision that disclosure of document [4] would seriously undermine the Council's decision-making processes within the meaning of Article 4(3) of the Regulation and the Council further failed to even consider whether there was an overriding public interest in the disclosure of this document.

Fifthly, the law, facts and matters involved did not and do not justify the initial decision that parts of any or all of documents [1]-[3], [5]-[7], [10], [11], [13], [15], [19], [20], [22], [25], [26], [30], [32], [34], [37], [40], [52]-[66], [68], [69]-[78], [107], [112], [118] and/or [127]-[128] could not properly be disclosed, pursuant to Article 4(6) of the Regulation.

Ground 1: Failure to conduct an adequate search

1. The Council identified 139 documents as falling within the scope of our request, listed at pages 1-9 of the initial decision.
2. This list of documents failed to include the following documents, which were even specifically identified in our narrowed request:
 - a. any and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the extraordinary meeting of the Permanent Representatives held on 28 April 2014 about the Ukraine;
 - b. the Revised Commission reflection paper on the "Legal Consequences of the Illegal Annexation of Crimea by the Russian Federation and Proposals for Economic, Trade and Financial Restrictions" ("the Commission reflection paper");
 - c. any and all earlier drafts of the Commission reflection paper;
 - d. any and all comments of the Member States on the Commission reflection paper;
 - e. the revised country fiches on the impact of stage 3 restrictive measures distributed by the Commission ("the country fiches");

- f. any and all earlier versions of the country fiches;
 - g. any and all comments to the Commission by the Member States regarding the country fiches;
 - h. the agenda² and minutes of the meeting of the Permanent Representatives Committee on 7 May 2014 and any and all reports, minutes, opinions, submissions, analyses and advices relating to Ukraine and restrictive measures which were prepared for and/or considered at the meeting.
 - i. any and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the meeting of the Permanent Representatives Committee held on 1, 3 and 7 July 2014, including:
 - i. the presentation by the EEAS “on the situation on the ground and on the degree of the fulfilment of the four elements listed in the European Council’s conclusions”;
 - ii. the options presented by the Commission “regarding financial co-operation with Russia, if further sanctions were decided”;
 - iii. the options presented by the EEAS “if further sanctions were to be decided”;
 - iv. the updated presentation by the EEAS on the situation in Ukraine at the meeting on 7 July 2014;
 - v. the assessment by the European Union Intelligence Analysis Centre “of the security situation and possible evolutions on the ground”;
 - vi. the presentation by the Commission on possible options regarding financial co-operation with Russia;
 - vii. the note of further possible measures prepared by the EEAS and the Commission;
 - j. any and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the restricted session of the 2505th meeting of the Permanent Representatives Committee held on 9 and 11 July 2014 about the Ukraine; and
 - k. any and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the restricted session of the 2509th meeting of the Permanent Representatives Committee held on 10 September 2014 about the Ukraine.
3. Further, the Council’s list of documents failed to include (or disclose) any of the following documents, which were referred to in the written record of the restricted session of the 2506th meeting of the Permanent Representatives Committee held on 15 July 2014 (document [50]) and which clearly fall within the scope of both our initial request and our narrowed request:
- a. the “presentation by the EEAS on the situation on the ground in Ukraine”;

² The *provisional* agenda for this meeting was identified (document [79]) and disclosed.

- b. the EEAS/ Commission options paper on Crimea (COREU EAS/0814/14);
 - c. information prepared by the Commission on the Ministerial-level consultations held on 11 July 2014 between the Commission, Russia and Ukraine on the implementation of the EU-Ukraine Association Agreement/ DCFTA;
 - d. the presentation by the Commission “on the EEAS/Commission options paper on Crimea (COREU EAS/0814/14 Restraint UE/EU Restricted, information prepared by the Commission on the Ministerial-level consultations held on 11 July 2014 between the Commission, Russia and Ukraine on the implementation of the EU-Ukraine Association Agreement/ DCFTA, the situation regarding trilateral talks on gas supplies in Ukraine and the high level meeting held on 8 July 2013 on coordinating and implementing international support to Ukraine”;
 - e. the minutes or other written record of the high level meeting held on 8 July 2013 on coordinating and implementing international support to Ukraine and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the meeting; and
 - f. the minutes or other written record of the meeting of the European Council on 16 July 2014 and all reports, minutes, opinions, submissions, analyses and advices which were prepared for and/or considered at the meeting.
4. Further, the Council failed to include in its list of documents and/or to disclose:
- a. any documents prepared by the Commission or the EEAS which set out the reasons for selecting the oil sector in preference to other sectors;
 - b. any documents relating to the short, medium and long-term impact which the measures imposed by the Decision and the Regulation were expected to have upon the oil exploration and production industry in Russia and relevant EU exporters;
 - c. any documents relating to the operations of, and anticipated impact of the restrictive measures upon, **DELETED** and its subsidiaries;
 - d. any documents relating to the adoption of Articles 7 and 8 of the Decision and Articles 11 and 12 of the Regulation;
 - e. any documents which relate to which Member States voted for the Decision and the Regulation, and the arguments both for and against the measures which were considered by the Council prior to the implementation of the Decision and the Regulation;
 - f. any documents prepared by the Council, Commission, EEAS or High Representative of the European Union for Foreign Affairs and Security Policy relating to the monitoring and assessment of the restrictive measures; and/or
 - g. any documents relating to proposals for further restrictive measures considered in the period from August to September 2014, in relation to sensitive technologies or at all.

5. We consider that it is inconceivable that no such documents could have been identified by the Council, had it undertaken an adequate and reasonable search.
6. We ask the Council to reconsider its response and to undertake a full and proper search for documents falling within the scope of our request, including but not limited to those documents identified in paragraphs 2-4 above.

Ground 2: Failure to undertake a document-by-document assessment

7. According to the settled case-law, on receipt of a request for documents under the Regulation, the EU institution must, as a matter of principle, undertake a *“concrete, individual assessment of the content of the documents covered in the application for access”* as regards each exception mentioned in paragraphs 1 to 3 of Article 4 of the Regulation.³ This ensures that the institution assesses specifically whether an exception invoked actually applies to all of the information contained in each of the documents.⁴
8. In breach of this obligation, the Council failed to undertake a document-by-document assessment in respect of the following documents:
 - a. The Council considered, as a category, all of the documents [1], [2], [3], [5], [6], [7], [10], [11], [13], [15], [19], [20], [25] and [26] (drafts of Council conclusions on the Ukraine and the Crimea conflict);
 - b. The Council considered, as a category, all of documents [52]-[66], [68]-[74] and [75]-[78] (*“meeting room documents”* pertaining to the adoption of the Ukraine’s legislation imposing restrictive measures pursuant to the crisis in Ukraine) (formally and artificially described as two categories in the initial decision)⁵; and
 - c. The Council considered, as a category, documents [107], [112], [118], [127] and [128] (proposals by the Commission and the High Representative pertaining to the adoption of the Union’s legislation imposing restrictive measures pursuant to the crisis in Ukraine).
9. The Council did not seek to justify its failure to give a concrete, individual, examination of these documents. Indeed, it was not open to it to do so. For whilst the Court has accepted that a single justification may be applied to documents belonging to the same category, such categories must be defined on the basis of the information contained in the document, as opposed to the document *“type”*⁶. Further, an assessment by category is only permissible *“in the event that the documents falling within a category are manifestly covered in their entirety by an exception”*⁷, whereas in relation to all of the above noted documents the Council ought to have

³ Case T-2/03, *VKI v Commission (VKI)* ECLI:EU:T:2005:125 [75]; Case T-36/04, *Association de la presse internationale asbl v EC Commission (Association de la Presse)* ECLI:EU:T:2007:258 [57]; Case T-344/08, *EnBW Energie Baden – Württemberg v European Commission (EnBW Energie)* ECLI:EU:T:2012:242[28].

⁴ Case T-123/99, *JT’s Corporation v Commission* ECLI:EU:T:2000:230 [46]; VKI [73].

⁵ The description of all these documents is the same (and the reasons for denying access verbatim). In this regard, note *EnBW Energie* [67]: “[I]f it were possible to apply one and the same line of reasoning to two different categories, there would, in actual fact, be just one single category, for the purpose of examining the request for access. In the latter case, a division into categories would then be artificial and serve no purpose.”

⁶ *Association de la presse*, [66]-[68].

⁷ *EnBW Energie* [65].

considered and did, at least, purport to consider whether partial access to those documents should be granted pursuant to Article 4(6) of the Regulation.

10. Further, although the initial decision is said to be *“without prejudice to the fact that [the] request concerns a very large number of documents”*, the Council has adduced no evidence in support of this assertion, nor does the initial decision explain the failure to undertake a document-by-document assessment on this basis. In any event, the case-law establishes that, *“it is only in exceptional cases and only where the administrative burden entailed by a concrete, individual examination of the documents proves to be particularly heavy”* that a derogation from the obligation to undertake a document-by-document *“may”* be permissible.⁸
11. In light of the foregoing we ask the Council to reconsider the initial decision on the basis that it has failed to undertake a document-by-document assessment of the documents falling within the scope of our request. The Council has not justified, and cannot justify, its failure to do so.

Ground 3: The law, facts and matters involved did not and do not justify the application of the Article 4(1)(a) exception to any or all of the documents identified

12. Article 4(1)(a) of the Regulation provides, insofar as is relevant,

Article 4

Exceptions

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

—
— *international relations,*

13. The initial decision places much store on this exception, relying on it to justify the refusal to disclose 51 documents entirely ([1]-[3], [5]-[7], [10],[11], [13], [15], [19], [20], [22], [25],[26], [30], [32], [34], [37], [40], [52]-[78], [107], [112], [118], [127], [128]) and 6 further documents in part ([29], [31], [33], [35], [36], [38]). The law, facts and matters involved did not and do not justify such a refusal.
14. According to the settled case-law, *“since they derogate from the principles of the widest possible public access to documents, the exceptions must be interpreted and applied strictly.”*⁹
15. Further, *“the mere fact that a document concerns an interest protected by an exception to the right of access laid down in Article 4 of [the Regulation] is not sufficient to justify the application of that provision.”*¹⁰ If the EU institution decides to refuse access to a document which it has been asked to disclose, it must explain how disclosure of that document *“could specifically and actually undermine the interest protected by the exception... upon which it is relying”* and *“the*

⁸ *EnBW Energie* [103] (emphasis added) and the case-law there cited.

⁹ Case C-506/08 P, *Sweden v Commission* ECLI:EU:C:2011:496 [75] and the case-law there cited. See similarly Case C-350/12, *Council of the European Union v Sophie in't Veld (Sophie in't Veld)* ECLI:EU:C:2014:2039 [48] and the case-law there cited.

¹⁰ C-404/10 P, *Commission v Editions Odile Jacob* ECLI:EU:C:2012:393 [116]; *Sophie in't Veld* [51].

*risk of the interest being undermined must be reasonably foreseeable and not purely hypothetical*¹¹ (emphasis added).

16. In the context of Article 4(1)(a), third indent, specifically, the Court has held that *“the mere fact that certain documents contain information or negative statements about the political situation, or the protection of human rights, in a third country, does not necessarily mean that access to them may be denied on the basis that there is a risk that the public interest may be undermined. That fact, in itself and in the abstract, is not a sufficient reason for refusing a request for access”* (Case T-211/00, *Kujer v Council of the European Union (“Kujer”)* at [60]).
17. It is evident from the initial decision, that the Council erred in two overarching respects in its assessment under Article 4(1)(a), third indent:
 - a. First, the Council relied on an unduly wide construction of Article 4(1)(a) of the Regulation, failing to apply that exception properly, still less failing to take into account (properly, sufficiently, or at all) the fact that any restriction on the right of access must be applied strictly and narrowly interpreted.
 - b. Secondly, the reasoning provided by the Council in the initial decision was inadequate and did not comply with the legal requirements. The Council’s explanation for refusing access to documents under the Article 4(1)(a) exception was cursory, and failed to set out any facts, explanation or evidence to justify its decision not to disclose the documents refused under that exception.
18. In particular, and without prejudice to the generality of the arguments articulated in paragraph 17 above:
 - a. The Council only granted partial access to document [29] stating that, *“some of the information in the document cannot be released since it could create diplomatic difficulties with a third state”*. Even assuming that the release of document [29] could have this effect (which is not accepted), the onus on the Council was to show that release of document [29] *“would undermine the protection of the public interest as regards... international relations”* (Article 4(1)(a), the Regulation). The fact that *“diplomatic difficulties”* *“could”* arise is not sufficient to engage the Article 4(1)(a) exception which, as the case-law makes clear, must be interpreted and applied strictly. Further, the Council’s explanation for its failure to grant full public access to document [29] was abstract and un-particularised (what diplomatic difficulties? with which third state?); was unsupported by evidence; failed to demonstrate how disclosure of document [29] could specifically and actually undermine the public interest as regards international relations; and failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical.
 - b. The Council refused to disclose any part of each of documents [1], [2], [3], [5], [6], [7], [10], [11], [13], [15], [19], [20], [25] and [26] on the ground that, *“[r]eleasing these documents to the public, especially at this sensitive time, would allow third states to assess the level of convergence of positions within the Council and potentially exploit differences.”* By the Council’s own admission, therefore, any harm that would result from the release of (any or part of any) these documents was merely *“potential”*.

¹¹ Case T-233/09, *Council v Access Info Europe* ECLI:EU:T:2011:105 [31] and the case-law cited; *Sophie in’t Veld* [52].

Further, the Council's explanation for its failure to grant public access to these documents was abstract and un-particularised (what sensitive time? which third state? convergence of positions on what subject?) and was unsupported by evidence. Moreover, the Council failed to demonstrate how disclosure of any or all of these documents could specifically and actually undermine the public interest as regards international relations and failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical. (The Council also erred in failing to consider these documents on an individualised, document-by-document basis, as explained above.)

- c. The Council refused to disclose any part of document [22] on the ground that, "*[i]ts release would negatively affect the EU's relations with a third state*". The Council therefore failed to establish that exception Article 4(1)(a), third intent, (disclosure "*would undermine the protection of the public interest as regards international relations*") was engaged at all: a broad allegation of a "*negative affect*" on relations with a third state does not meet that criterion, not least since the case-law establishes that the exception must be interpreted and applied strictly. Further, the Council failed set out any facts or evidence to justify its assertion that release of document [22] would negatively affect the EU's relations with a third state. Moreover, the Council failed to demonstrate how disclosure of document [22] could specifically and actually undermine the public interest as regards international relations and failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical. It was not open to the Council to simply state that "*[t]he General Secretariat cannot provide further reasons without revealing the content of the document*", not least because document [22] is not a "*sensitive document*" within the meaning of Article 9 of the Regulation.
- d. The Council refused to disclose any part of document [30] on the ground that, "*in order for these internal guidelines to be effective, it is important that they remain shielded from scrutiny by the third state involved. For this reason, public disclosure would be detrimental to the Union's ability to conduct diplomacy in a sensitive area.*" This was a further instance of the Council erroneously adopting an unduly broad approach to the interpretation and application of Article 4(1)(a) – "*detriment to the Union's ability to conduct diplomacy*" should not be equated with "*undermining the protection of the public interest as regards international relations*". Further, the Council's explanation for its failure to grant public access to document [30] was vague and un-particularised; was unsupported by evidence; failed to demonstrate how disclosure of document [30] could specifically and actually undermine the public interest as regards international relations; and failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical.
- e. The Council only granted partial access to document [31] on the ground that, "*[t]his document reflects discussions held by EEAS with the Russian side on a topic of intense sensitivity. The Council believes that the public release of the document would, at this stage and in the light of Russia's general views of integration in Eastern Europe, be detrimental to EU-Russian relations.*" The Council's explanation for its failure to grant public access to document [31] was abstract and un-particularised; was unsupported by evidence; failed to demonstrate how disclosure of document [31] could specifically and actually undermine the public interest as regards international relations; and failed to establish that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical.

- f. The Council refused to disclose any part of document [32] on the ground that, *“providing public access to this document could cause difficulties both for the government of Ukraine and for EU relations with Ukraine and third states.”* It bears repeating that the exception in Article 4(1)(a), third indent, only applies to documents, the release of which *“would undermine the protection of the public interest as regards...international relations”*. The assertion that public access to document [32] *“could cause difficulties for the government of Ukraine”* does not fall within that exception, especially in light of the fact that the Court has held that such exceptions must be interpreted and applied strictly. Further, the Council’s explanation for refusing public access to document [32] was abstract and un-particularised; was unsupported by evidence; failed to demonstrate how disclosure of document [32] could specifically and actually undermine the public interest as regards international relations; and failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical.
- g. The Council only granted partial access to documents [33], [34] and [38]. The only reason given for this partial refusal was that *“release... would be detrimental to the EU’s relations with a third state”*. That explanation is unjustifiably vague, and renders it impossible for the public (or, indeed, the Court) to determine whether the decision to grant only partial access to these documents is well founded. In addition, the Council failed to demonstrate how disclosure of these documents could specifically and actually undermine the public interest as regards international relations; was unsupported by evidence; failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical; and failed to consider these documents on an individualised, document-by-document basis.
- h. The Council only granted partial access to documents [35] and [36] on the ground that, *“[t]he last paragraph of document [35] contains information which, if released, could damage relations with a third country and/or actors within that country. The same is true for the corresponding part of document [36].”* This explanation was unsupported by evidence and is indefensible for its want of particularity. In particular, the Council’s failure to identify in any concrete (let alone specific) way what harm *“could”* be caused by the full release of documents [35] and [36] (*“could damage relations with a third country and/or actors within that country”* (emphasis added)) betrays a fundamental misapplication of Article 4(1)(a), third indent, on the part of the Council. The Council failed to demonstrate how disclosure of these documents could specifically and actually undermine the public interest as regards international relations and failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical.
- i. The Council refused to disclose any part of document [37] on the ground that *“some of the data in the document have changed in response to events. Moreover, the data in the document were not definitive. Releasing the document to the public could negatively affect relations with the Russian Federation.”* That explanation was abstract and un-particularised, failing to illustrate how and in what way release of document [37] could negatively affect relations with Russia, and how, if at all, the fact that *“some”* of the data had since changed and/or were not definitive was relevant and/or materially relevant. The Council did not provide any evidence in support of the assertions made in respect of document [37]. Further, the Council failed to demonstrate how disclosure of document [37] could specifically and actually undermine the public interest as regards international

relations and failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical.

- j. The Council refused to disclose document [40] on the ground that, “[p]roviding public access to the note would enable third countries to gain insights into how far the EU is willing to go in its sanctions policy.” The Council failed to explain how, if at all, this could “undermine the protection of the public interest... in international relations” (Article 4(1)(a), third indent) and thus failed to demonstrate that the exception was properly engaged. The Council’s explanation in relation to its refusal to disclose document [40] was unsupported by evidence; failed to demonstrate how disclosure of document [40] could specifically and actually undermine the public interest as regards international relations; and failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical.
 - k. The Council also refused to disclose any part of any of documents [52]-[66], [68]-[78], [107], [112], [118], [127] or [128]. The reason given in the initial decision was that, “[t]he public release of any of them would enable third countries to assess the differences between the proposals for sanctions and the final outcome. This would enable third countries to determine to what extent the Union is prepared to go with its restrictive measures policy. Revealing that information would be detrimental to the Union’s ability to use restrictive measures to their maximum effect”. Even assuming that release of these documents would be detrimental to the Union’s ability to use restrictive measures (which is not accepted), it is not at all evident, nor apparent from the Council’s reasoning, why this would “undermine the protection of the public interest as regards... international relations”. The denial of access rests on an unspoken, and at least doubtful, premise that the use of sanctions is conducive to good international relations. Further, the Council failed to set out any facts or evidence to justify its assertion in respect of these documents. Thirdly, the Council failed to demonstrate how disclosure of these documents could specifically and actually undermine the public interest as regards international relations and failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical. Finally, the Council failed to consider these documents on an individualised, document-by-document basis. Although the initial decision asserts that “the Council has checked each of these documents individually”, it has not said or disclosed anything that would tend to show that it had in fact considered these documents on an individualised, document-by-document basis.
19. It can be seen from the above that the Council made a decision in abstracto on the risks that disclosure of these documents could pose to international relations, without showing to the requisite legal standard that their disclosure would actually undermine the public interest as regards international relations.
20. Further, insofar as the Council refused to release documents on the ground that allowing such access would harm relations with Russia, such generalised, un-particularised and unsubstantiated claims must also be viewed in the overall context, in which the European Union has been publicly critical of Russia’s actions in Ukraine and Crimea. The Council has publicly, forcefully and repeatedly condemned, “the clear violation of Ukraine’s sovereignty and territorial integrity by acts of aggression by the Russian armed forces as well as the authorisation given by the Federation Council of Russia.”¹² Against this background, there is no proper basis for

¹² <http://consilium.europa.eu/homepage/showfocus?focusName=ukraine-eu-condemns-russias-actions%2C-calls-for-de-escalation-and-remains-ready-for-further-measures&lang=en>. See, by way of example, Document

deciding that the disclosure of the documents requested could itself harm the EU's relations with Russia. As the General Court explained in *Kujer*, in relation to the Council's refusal to disclose certain country-specific reports at [65]-[66]:

"[C]ertain factors may remove any risk of negative repercussions which disclosure of the [documents] might entail for the European Union's relations with the countries concerned.

"Thus, for example, a document may contain an analysis of the situation as it was in a country at a given time and that country might have undergone significant political changes. It may also prove to be the case that the European Union itself, through its institutions, in particular the Council and its presidency, has already officially criticised the internal situation of the countries concerned. Furthermore, the relations of the European Union with those countries may be such that they cannot be damaged by disclosure of any criticism made by the Union of the internal situation of the countries or their respect for human rights..."

21. For all of these reasons, we submit that the law, facts and matters involved did not and do not justify the Council's initial decision that disclosure of documents [1]-[3], [5]-[7], [10], [11], [13], [15], [19], [20], [22], [25], [26], [30], [32], [34], [37], [40], [52]-[78], [107], [112], [118], [127] and/or [128] and/or full disclosure of documents [29], [31], [33], [35], [36] and/or [38] 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. We therefore ask the Council to reconsider the initial decision insofar as it refused full or partial access to those documents.

Ground 4: The law, facts and matters involved did not and do not justify the application of the Article 4(3) exception to document [4]

22. Further, by its initial decision the Council refused to disclose document [4] (save that the first five pages of that document were disclosed) in reliance on the exception contained in Article 4(3), paragraph 2 of the Regulation. The explanation given was that, *"release of these draft statements which at that stage were put forward for internal use only as part of deliberations within the Council would seriously undermine future decision making on similar issues"*.
23. This aspect of the initial decision must be reconsidered.
24. First, the Article 4(3) exception only applies if the EU institution considers that access to the document *"would seriously undermine the institution's decision-making process"* and there is no *"overriding public interest in disclosure"*. By its initial decision, the Council clearly adopted an overly broad construction of Article 4(3), which relates specifically to the undermining of *"decision-making process"* (emphasis added).
25. Secondly, the Council failed to demonstrate how disclosure of document [4] could specifically, actually and seriously undermine future decision-making and failed to show that the risk of future decision-making being undermined was reasonably foreseeable and not purely hypothetical. The Council also failed to adduce any facts and/or evidence in support of its

Number 6761/14, 'Council Conclusions – Relations with Ukraine' 21.04.2014, Document Number 7208/14, 'Council Conclusions – Relations with Ukraine' 04.03.2014; Document Number 9735/14, 'Relations with Ukraine – Council Conclusions' 12.05.2014. The European Council has also been vocal in its condemnation of Russia: see, by way of example, Document Number EUCO/7/1/14, 'European Council Conclusions' 21.03.2014; Document Number EUCO 147/14, 'Special Meeting of the European Council – Conclusions' 16.06.2014.

assertion that disclosure of document [4] would seriously undermine future decision-making processes. This was a material error. As the General Court explained in Case T-144/05, *Muniz v EC Commission*, “the determinant issue is whether the concerns of the relevant institution are objectively justified” ([90]) and it is therefore essential that such concerns be “corroborated by evidence” ([41]).

26. Thirdly, and more significantly, the Council failed to mention, let alone consider, the competing public interest in full disclosure of document [4]. Disclosure of this document would promote the public interest in understanding both how and why these highly public, political and controversial restrictive measures were adopted. This public interest in disclosure overrides the entirely hypothetical threat to the Council’s decision-making process. At the very least, the Council’s failure to even consider whether there was a competing public interest in favour of disclosing document [4] demonstrates a manifest failure on the Council’s part to undertake a proper analysis and assessment of document [4] and/or to give proper reasons.

Ground 5: The law, facts and matters involved did not and do not justify the failure to provide at least partial access to documents requested, pursuant to Article 4(6) of the Regulation


27. The Council asserts that it assessed for each of the documents [1], [2], [3], [5], [6], [7], [10], [11], [13], [15], [19], [20], [22], [25], [26], [30], [31], [32], [34], [37], [40] [52]-[66], [68]-[78], [107], [112], [118], [127] and [128] whether it would be possible to provide partial access but determined that it could not do so. Many of the documents were assessed under Article 4(6) in a group, as opposed to on a document-by-document basis, and the points raised above at paragraphs 7-10 above are repeated. Moreover, we ask the Council to reconsider this aspect of the initial decision on two further grounds.
28. First, the Council erred in law in holding that public access to part of any of documents [1], [2], [3], [5], [6], [7], [10], [11], [13], [15], [19], [20], [25] or [26] “*would be detrimental to the unity of the Council vis-à-vis ... third states*”. That explanation is vague and ambiguous. Foremost, it is unclear which, if any, of the Article 4 exceptions the Council relies on to justify its refusal to grant partial disclosure of these documents. Does the Council intend to rely on Article 4(3) paragraph 2, (“*disclosure... would seriously undermine the institution’s decision-making process*”)? Or does Council intend to rely on Article 4(1)(a), third indent, (“*disclosure would undermine the protection of the public interest... as regards international relations*”)? The Council’s explanation in this regard is unclear and was not supported by any evidence. Further, whichever exception the Council sought to invoke, it was incumbent on the Council to demonstrate how full disclosure of any or all of these documents could specifically and actually undermine the public interest and that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical. This the Council failed to do.
29. Secondly, as regards each of the other documents to which the Council refused to grant partial disclosure (documents [30], [31], [32], [34], [37], [40] [52]-[66], [68]-[78], [107], [112], [118], [127] and [128]) the Council’s gave a single, cursory explanation: “*Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed whether any part of this document would not fall within this exception but determined that this is not the case*”. That explanation is inadequate. It is impossible for the public (or, indeed, the Court) to determine whether the decision to refuse even partial access to these documents is well founded. Further, the Council failed to demonstrate how full disclosure of these documents could specifically and actually

undermine the public interest and failed to show that the risk of the public interest being undermined was reasonably foreseeable and not purely hypothetical.

We respectfully ask the Council to reconsider its position, in light of the points raised in this confirmatory application.

Yours faithfully

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