



Council of the  
European Union

Brussels, 3 December 2014  
(OR. en)

15619/14

INF 321  
API 139

**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 36/c/05/14

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Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 15 October 2014, registered on 16 October 2014 ([Annex 1](#));
- reply by the General Secretariat of the Council dated 24 October 2014 ([Annex 2](#));
- confirmatory application dated 13 November 2014 and registered the same day ([Annex 3](#)) (not including the enclosed initial request and the initial decision which can be found in Annexes 1 & 2 of this document).

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

**From:** **DELETED**

**Sent:** Wednesday, 15 October, 2014 19:45

**To:** SECRETARIAT DGF Access

**Subject:** Request for Documents under Regulation (EC) 1049/2001 **DELETED**

Dear Sirs,

Please see letter attached.

Yours faithfully,

**DELETED**



15 October 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](mailto:access@consilium.europa.eu)

Our ref: [redacted]  
Your ref:

Dear Sirs

**Request for Documents under Regulation (EC) 1049/2001, relating to Council Decision 2014/659/CFSP and Council Regulation (EU) 960/2014.**

We, [redacted]  
[redacted]  
[redacted], 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).

[redacted]  
[redacted]  
[redacted] for the annulment of certain provisions of: (a) Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine ("the Decision"); (b) Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine ("the Regulation"); (c) Council Decision 2014/659/CFSP of 8 September 2014 amending the Decision ("the Amending Decision"); and (d) Council Regulation (EU) No 960/2014 of 8 September 2014 amending the Regulation ("the Amending Regulation").



### 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 Amending Decision or Amending Regulation, (b) containing or identifying any evidence or information on which assessments underpinning the Amending Decision and Amending Regulation were based, (c) which are or would have been otherwise relevant to the making or not making of the Amending Decision and the Amending Regulation. In relation to a previous request you have asserted that this request is too wide. Without prejudice to whether that is right or not, we provide a detailed request at paragraph 3 below and we request that you, at least, respond to that request as soon as possible regardless of your position regarding the overall request set out in this paragraph.
2. For the avoidance of doubt this request does not repeat the request made in the clarified request dated 17 September 2014 in relation to the Decision and the Regulation for:
  - 2.1. 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; and
  - 2.2. 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.
3. 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:
  - 3.1. the assertions of fact relating to the actions of Russian Armed Forces which are contained in recital (2) to the Amending Decision.
  - 3.2. the matters which were considered in deciding to extend the prohibition in relation to certain financial instruments by restricting access to the capital market by certain Russian entities whose main business is the sale or transportation of oil, and the reasons for restricting access to the capital market for those Russian entities in the oil sector in preference to other entities and to entities in other sectors;
  - 3.3. the matters which were considered in deciding to prohibit provision of specified associated services necessary for deep water oil exploration and production, arctic oil exploration and production or shale oil projects (specifically, (i) drilling, (ii) well testing, (iii) logging and completion services, (iv) supply of specialised floating vessels) and the reasons for specifying those associated services in particular and not others.

- 3.4. any analysis of the short, medium and long-term impact which further restrictive measures restricting access to the capital markets and the prohibition of the specified associated services imposed by the Amending Decision and the Amending 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;
- 3.5. the operations of, and anticipated impact of the said further restrictive measures upon, [REDACTED];
- 3.6. the reasons for listing [REDACTED] in the list of three entities in Annex V1 of the Amending Regulation as those entities to whom access to the capital markets is restricted by Article 5 (2) (b) of the specific technologies listed in Annex II of the Regulation;
- 3.7. which Member States voted for the Amending Decision and the Amending Regulation, and the arguments both for and against the further restrictive measures which were considered by the Council prior to the implementation of the Amending Decision and the Amending Regulation;
- 3.8. other restrictive measures which were contemplated or considered by the Council in the period from August 2014 to September 2014 but not adopted, and the reasons for not adopting such other restrictive measures;
- 3.9. the legality of the Amending Decision and the Amending Regulation;
- 3.10. the anticipated reaction of the Government of the Russian Federation to the implementation of the further restrictive measures, and in particular with regard to its foreign policy objectives in relation to the Ukraine;
- 3.11. 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.

Email: [REDACTED]

Yours faithfully  
[REDACTED]

[E-mail message sent to the applicant on 24 october 2014, 17:12]

**From:** SECRETARIAT DGF Access  
**Sent:** Tuesday, October 24, 2014 17:12  
**To:** **DELETED**  
**Subject:** Ref. 14/1821-bd/mi

Dear **DELETED**,

On 16 October 2014, we registered your request of 15 October 2014 for public access to Council documents. Thank you for your interest.

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 documents<sup>1</sup> (hereafter the "Regulation") and specific provisions of the Council's Rules of Procedure<sup>2</sup> and has come to the following conclusion:

You request public access to documents concerning Council Decision amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine and Council Regulation amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. The General Secretariat has identified the following documents as being covered by your request:

- 1) [no number] EEAS/Commission joint non-paper outlining proposals for a second round of restrictive measures on Russia
- 2) 12794/14 DCL 1 EEAS proposal for Council amending Decision
- 3) 12796/14 DCL 1 Commission/High Representative proposal for Council amending Regulation
- 4) 12796/14 ADD 1 DCL 1 Addendum to the Commission/High Representative proposal for Council amending Regulation
- 5) 12823/14 Draft Council amending Decision and Regulation
- 6) 12882/14 (+ REV 1) Draft Council amending Decision and Regulation
- 7) 12935/14 (+REV 1) Draft Council declarations

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<sup>1</sup> Official Journal L 145, 31.5.2001, p. 43.

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

- 8) CM 3982/14 Written procedure to adopt Council amending Decision and Regulation
- 9) CM 3983/14 Extension of the deadline for the written procedure to adopt Council amending Decision and Regulation
- 10) CM 4009/14 End of written procedure to adopt Council amending Decision and Regulation
- 11) 12817/14 (+COR 1 + COR 4) Council amending Decision
- 12) 12818/14 (+COR 1 + COR 5) Council amending Regulation

You may have public access to documents listed above under numbers [2] to [4] and [8] to [12].

Document numbered [1] in the above list is a EEAS/Commission joint non-paper outlining proposals for a second round of restrictive measures on Russia. Providing public access to this non-paper 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 numbered [5] and [6] in the above list are documents pertaining to the adoption of the Council amending Decision and Regulation. Public release of these documents 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, full 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, public access is nevertheless granted to those parts of the documents which are not covered by the above-mentioned exception.

Document numbered [7] in the above list is a draft for Council declarations relating to the adoption of the Council amending Decision and Regulation. Releasing this document (and its revised version) 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 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 it would be possible to provide partial access to this document (and its revised version) but determined that doing so would enable third states to assess which parts of the declarations were most contentious. This would be detrimental to the unity of the Council vis-à-vis such third states. The above-mentioned exception thus covers the entire document (and its revised version).

### 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.<sup>3</sup>

Yours sincerely,

For the General Secretariat

Jakob THOMSEN

Enclosures

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<sup>3</sup> 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:** Thursday, November 13, 2014 13:47  
**To:** SECRETARIAT DGF Access  
**Subject:** Request for Documents under Regulation (EC) 1049/2001 **DELETED**

Dear Sirs,

Please see letter attached.

Yours faithfully,

**DELETED**



13 November 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](mailto:access@consilium.europa.eu)

Our ref:   
Your ref: 14/1821-bd/mi

Dear Sirs

**Confirmatory Application Requesting the Council to Reconsider its Decision of 24 October 2014**

1. We refer to our request for access to documents dated 15 October 2014 (“the public access request”), by which we requested access to documents relating to Council Decision 2014/659/CFSP of 8 September 2014 (“the Amending Decision”) and Council Regulation (EU) No 960/2014 of 8 September 2014 (“the Amending Regulation”). We refer also to the Council’s reply of 24 October 2014 (“the public access decision”). In accordance with Article 7(2) of Regulation (EC) No 1049/2001 of the European Parliament and 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 decision.
2. We attach, for your reference, copies of the public access request and the public access decision. For ease of reference, we refer to the documents identified by the Council by the numbering adopted by the Council in the public access decision.
3. We seek a reconsideration of the public access decision on two grounds:
  - a. First, that the Council failed to conduct an adequate search for the documents identified in the public access request;

- b. Secondly, the law, facts and matters involved did not and do not justify the Council's decision that disclosure of documents [1] and/or [7] and/or full disclosure of documents [5] and/or [6] would undermine the protection of the public interest as regards international relations, within the meaning of Article 4(1)(a), third indent.

**Failure to conduct an adequate search**

4. The Council identified just 12 documents as falling within the scope of the public access request. Insofar as is apparent from the Council's public access decision, the Council has failed to include in its list of documents and/or to disclose any reports, minutes, opinions, submissions, analyses and advices, relating to:
  - a. the assertions of fact relating to the actions of the Russian Armed Forces which are contained in recital (2) to the Amending Decision;
  - b. the matters which were considered in deciding to extend the prohibition to certain financial instruments by restricting access to the capital market by certain Russian entities whose main business is the sale or transportation of oil, and the reasons for restricting access to the capital markets for those Russian entities in the oil sector in preference to other entities and to entities in other sectors;
  - c. the matters which were considered in deciding to prohibit provision of specified associated services necessary for deep water oil exploration and production, arctic oil exploration and production or shale oil projects (specifically, (i) drilling, (ii) well testing, (iii) logging and completion services, (iv) supply of specialised floating vessels) and the reasons for specifying those associated services in particular and not others;
  - d. any analysis of the short, medium and long term impact which further restrictive measures restricting access to the capital markets and the prohibition of the specified associated services imposed by the Amending Decision and the Amending 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;
  - e. the operations of, and anticipated impact of the said further restrictive measures upon [REDACTED];
  - f. the reasons for listing [REDACTED] in the list of three entities in Annex VI of the Amending Regulation as those entities to whom access to the capital markets is restricted by Article 5(2)(b);
  - g. which Member States voted for the Amending Decision and the Amending Regulation, and the arguments both for and against the further restrictive measures which were considered by the Council prior to the implementation of the Amending Decision and the Amending Regulation;
  - h. other restrictive measures which were contemplated or considered by the Council in the period from August 2014 to September 2014 but not adopted, and the reasons for not adopting such other restrictive measures;

- i. the legality of the Amending Decision and the Amending Regulation;
  - j. the anticipated reaction of the Government of the Russian Federation to the implementation of the further restrictive measures, and in particular with regard to its foreign policy objectives in relation to the Ukraine; and/or
  - k. communications with non EU Member States, in particular the United States of America, regarding restrictive measures under consideration or to be adopted.
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.

**Article 4(1)(a), third indent**

6. The Council has refused disclosure of documents [1] and [7] and granted only very partial access to documents [5] and [6] on the ground that disclosure of these documents would undermine the protection of the public interest as regards international relations, within the meaning of Article 4(1)(a), third indent.
7. 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”*<sup>1</sup> (emphasis added). Further, *“the mere fact that a document concerns an interest protected by an expectation to the right of access laid down in Article 4 of [the Regulation] is not sufficient to justify the application of that provision.”*<sup>2</sup> If an 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 risk of the interest being undermined must be reasonably foreseeable and not purely hypothetical”*<sup>3</sup> (emphasis added).
8. The law, facts and matters involved did not and do not justify the refusal to grant full (or greater) access to documents [5] and [6]. In particular:
- a. The denial of access rests on the assumption that the disclosure of the information contained in these documents would enable third countries to *“assess the differences between proposals for sanctions and the final outcome.”* It is not clear to us, and the Council fails to explain, how the Council can rely on this point to refuse disclosure, not least because the Council has granted access to draft proposals for both the Amending Decision and the Amending Regulation (documents [2], [3] and [4]).
  - b. Even assuming that disclosure of documents [5] and [6] would enable third countries to assess the differences between proposals for sanctions and the final outcome in some unspecified further and material respect (which is not accepted), the Council has failed to explain how, if at all, this would be in any way detrimental to the Union’s ability to use restrictive measures *“to their maximum effect”*.

<sup>1</sup> Case C-506/08 P, *Sweden v Commission* ECLI:EU:C:2011:496 [75] and the case-law there cited; Case C-350/12, *Council of the European Union v Sophie in’t Veld* ECLI:EU:C:2014:2039 (*“Sophie in’t Veld”*) [48] and the case-law there cited).

<sup>2</sup> Case C-404/10 P, *Commission v Editions Online Jacob* ECLI:EU:C:2012:393 [16]; *Sophie in’t Veld* [51].

<sup>3</sup> Case T-233/09, *Council v Access Info Europe* ECLI:EU:T:2011:105 [31] and the case-law there cited; *Sophie in’t Veld* [52].

- c. Further, 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 decision, how and/or why this could "*undermine the protection of the public interest as regards... international relations*". The Council has failed to set out any facts or evidence to justify its assertion that disclosure of these documents would undermine the protection of the public interest, or to demonstrate how their disclosure could specifically and actually undermine the public interest, and/or that the risk of undermining the public interest as regards international relations is reasonably foreseeable and not purely hypothetical.
9. Moreover, the law, facts and matters involved did not and do not justify the refusal to grant full or partial access to documents [1] and [7]. In each case, the Council has failed to set out any facts or evidence to justify its assertion that disclosure of these documents would undermine the protection of the public interest, or to demonstrate how their disclosure could specifically and actually undermine the public interest, and/or that the risk of undermining the public interest as regards international relations is reasonably foreseeable and not purely hypothetical. Further, the Council has provided no explanation for its assertion that partial access to document [1] was not possible pursuant to Article 4(6) of the Regulation, such that 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.
10. For all of these reasons we consider that the Council's refusal to grant access to documents [1], [5], [6] and [7] was flawed

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

Yours faithfully



Enc

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