



Brussels, 25 February 2015
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NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 05/c/01/15

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 12 November 2014 ([Annex 1](#));
- messages sent by the GSC to the applicant dated 21 November 2014 and 3 December 2014 ([Annex 2](#));
- clarified request sent by the applicant dated 15 December 2014, registered on the same day ([Annex 3](#));
- confirmation of receipt sent by the GSC on 16 December 2014 ([Annex 4](#));
- reply sent by the GSC to the applicant on 5 February 2015 ([Annex 5](#))
- confirmatory application dated 18 February 2015 and registered the same day ([Annex 6](#)) (not including the enclosed initial request and the initial decision which can be found in Annexes 3 and 5 of this document).

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12 November 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: DELETED

Dear Sirs

Request for Documents under Regulation (EC) 1049/2001 relating to Council Decision 2014/512/CFSP, Council Regulation (EU) 833/2014, Council Decision 2014/659/CFSP and Council Regulation (EU) 960/2014.

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").

DELETED is the legal representative of DELETED DELETED which are all commercial companies within the DELETED in relation to the application by the DELETED companies 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").

For the avoidance of doubt, this is a new request for access to documents and does not repeat our requests dated 20 August 2014, as clarified by the request dated 17 September 2014, in respect of

which we submitted a confirmatory application on 27 October 2014, nor our request dated 15 October 2014.

The Access to Documents Request

1. Our overall request is for access to all documents, defined in Article 3 of Regulation 1049/2001, held by the Council (including all such documents drawn up or received by the Council) regarding (a) any decision made in respect of the implementation of the Decision or Regulation and the Amending Decision or Regulation; and (b) the consideration, preparation and/or provision of guidance to Member States relevant to the interpretation and application of the Regulation and the Amending Regulation.
2. Without prejudice to the generality of the request in paragraph 1, we specifically request access to all relevant reports, papers, proposals, minutes, opinions, submissions, analyses and advices, relating to:
 - 2.1. the Council's decision not to confer implementing powers on the Commission in respect of the Regulation and Amending Regulation;
 - 2.2. the respective roles and competence of the Council and Commission under Article 291 of the Treaty of the Functioning of European Union ("TFEU") regarding the implementation of the Decision or Regulation and Amending Decision or Regulation;
 - 2.3. any fact or circumstance relied on by the Council as justifying any decision to reserve implementing powers for itself in respect of the Regulation and Amending Regulation;
 - 2.4. the Commission's position on the Council retaining implementation powers of the Regulation and Amending Regulation, including, but not limited to, as contained in Joint Proposals by the Commission and the High Representative presented to the Council in respect of the Regulation and Amending Regulation;
 - 2.5. any analysis or consideration of the legal form or bases of any further implementation act proposed in respect of the Decision or Regulation and Amending Decision or Regulation;
 - 2.6. any analysis or consideration of how it was envisaged implementation of the Regulation and the Amending Regulation would be arranged;
 - 2.7. the Joint Council and Commission Declaration of 31 July 2014 on the "EU Sanctions Mechanism to optimise consistency in the application and monitoring of EU restrictive measures" ("the Mechanism"), including any analysis of the facts and circumstances leading to the establishing of the Mechanism, the reasons for establishing the Mechanism and the viability of such a Mechanism;
 - 2.8. any meetings and activity undertaken by the Mechanism to date and any analysis or consideration of the form in which its conclusions should be given effect;
 - 2.9. any requests made by the Mechanism to the Commission and/or the EEAS to issue guidance and/or information notes concerning the Regulation and the Amending Regulation;
 - 2.10. any requests made by Member States for guidance as to the implementation and interpretation of the Regulation and the Amending Regulation; and
 - 2.11. the need for more detailed guidance as to the implementation and interpretation of the Regulation and the Amending Regulation and the consideration, preparation and/or provision of any such guidance.

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: **DELETED**

Yours faithfully

DELETED

[E-mail message sent to the applicant on 21 November 2014, 1:25 PM]

From: SECRETARIAT DGF Access
Sent: Friday, November 21, 2014 1:25 PM
To: **DELETED**
Subject: Ref. Request for Access to Documents - 12 November 2014 - **DELETED**

Dear Sirs,

We refer to your request for access to documents dated 12 November 2014 and registered under reference number 14/2110.

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://www.consilium.europa.eu/documents/access-to-council-documents-public-register.aspx?lang=EN>

Once your request has been clarified, it may well be possible that it still 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. Furthermore, the General Secretariat invites you to considerably narrow down your request.

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 the applicant on 3 December 2014, 10:15]

From: SECRETARIAT DGF Access
Sent: Wednesday, December 3, 2014 10:16
To: **DELETED**
Subject: RE: Request for Access to Documents - 12 November 2014 - **DELETED**

Dear Sirs,

On 21 November 2014 (please see our message underneath), we wrote to you asking to clarify your request (your ref **DELETED**) since it is currently drafted in a manner that is impossible to reply to exhaustively. By way of example, all of the categories mentioned in point 2 of your request concern "*all relevant*" reports etc.. Even assuming, *arguendo*, that the General Secretariat was able to identify these documents, it would be very difficult to determine whether these are "*relevant*" as you understand it. Most of the categories mentioned in point 2 of your request relate to "*any*" analysis, meeting, activity, etc., which makes your request also extraordinarily broad in scope.

If the General Secretariat is unable to determine with reasonable precision what it must do to satisfy your request, it is unable to process it. We would therefore kindly invite you again, in accordance with Article 6(2) of the Regulation, to clarify the scope of your request. Once we have an understanding as to which documents you seek, we will be able to process your request further.

May we again invite you to consult the Council's Internet Register, which you will find at <http://www.consilium.europa.eu/documents/access-to-council-documents-public-register.aspx?lang=EN>

Depending on your reply, your request may concern a large number of documents. In this respect, the General Secretariat reserves its rights under Article 6(3) of the Regulation.

Yours sincerely,

Transparency and Access to Documents

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15 December 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: DELETED

Your ref: 14/1424

Dear Sirs

Reference 14/2110: Request for Documents under Regulation (EC) 1049/2001 relating to Council Decision 2014/512/CFSP, Council Regulation (EU) 833/2014, Council Decision 2014/659/CFSP and Council Regulation (EU) 960/2014.

1. We refer to your emails dated 21 November and 3 December 2014 in response to our request for access to documents dated 12 November 2014, which is registered under reference number 14/1424.
2. 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 request access to:
 - 2.1. all Joint Proposals by the Commission and the High Representative presented to the Council in respect of Council Regulation (EU) 833/2014 ("the Regulation") and Council Regulation (EU) 960/2014 ("the Amending Regulation");
 - 2.2. any documents setting out the Commission's position on the Council's decision to retain implementation powers in respect of the Regulation and Amending Regulation;
 - 2.3. any documents setting out the Council's decision not to confer implementing powers on the Commission in respect of the Regulation and Amending Regulation, including any documents discussing the respective roles and competence of the Council and Commission under Article 291 of the Treaty of the Functioning of European Union ("TFEU");

- 2.4. any documents underpinning the Joint Council and Commission Declaration of 31 July 2014 on the “EU Sanctions Mechanism to optimise consistency in the application and monitoring of EU restrictive measures” (“the Mechanism”), including any analysis of the facts and circumstances leading to the establishing of the Mechanism, the reasons for establishing the Mechanism and the viability of such a Mechanism;
- 2.5. any minutes from meetings and activity undertaken by the Mechanism to date;
- 2.6. any requests made by the Mechanism to the Commission and/or the EEAS to issue guidance and/or information notes concerning the Regulation and the Amending Regulation; and
- 2.7. any requests made by Member States to the Council, Commission or EEAS for guidance as to the implementation and interpretation of the Regulation and the Amending Regulation.

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: DELETED

Yours faithfully

DELETED

[E-mail message sent to the applicant on 16 December 2014, 11:33]

From: SECRETARIAT DGF Access

Sent: Tuesday, December 16, 2014 11:33

To: **DELETED**

Subject: RE: Refined request to the Council of the European Union **DELETED** (ref. 14/2110)

Dear Sirs,

We would like to acknowledge the receipt of your letter dated 15 December 2014 and referring to your request for public access dated 12 November 2014 (registered under reference number 14/2110, not 14/1424 as you erroneously indicate in your message).

Even if your request still remains very general despite the clarifications given in the letter, the General Secretariat should now be able to ascertain more 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 of your clarification letter, i.e. from 15 December 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



Council of the European Union

General Secretariat

Directorate-General Communication and Document Management

Directorate Document Management

Transparency and Access to Documents Unit

DELETED

Brussels, 5 February 2015

Ref. 14/2110-bd/mi

Dear **DELETED**,

Thank you for your clarified request for access to documents which the General Secretariat of the Council received and registered on 15 December 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 On 15 January 2015, the time-limit for replying to your application was extended by 15 working days. Having examined the request, the General Secretariat has come to the following conclusion:

We have identified the following documents held by the Council as falling within the scope of your request (for ease of relevance, this reply refers to the numbers in the left column):

Document reference	Subject of the document	Date of the document
1. 12305/14	Restrictive measures in view of Russia's actions destabilising the situation in Ukraine: Joint Council and Commission Declaration on a mechanism to optimize consistency in the application and monitoring of EU restrictive measures	30 July 2014

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.

Document reference	Subject of the document	Date of the document
2. 12305/1/14 REV 1	Restrictive measures in view of Russia's actions destabilising the situation in Ukraine: Joint Council and Commission Declaration on a mechanism to optimize consistency in the application and monitoring of EU restrictive measures	31 July 2014
3. 12977/14	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures	9 September 2014
4. 13118/14	Outcome of the meeting of the Permanent Representatives Committee (Part 2) on 10 September 2014	24 September 2014
5. CM 3791/14	Written procedure for the adoption of Council Decision and Council Regulation in July 2014 (also refers to the adoption of the Joint Council and Commission Declaration on a mechanism to optimize consistency in the application and monitoring of EU restrictive measures)	30 July 2014
6. CM 3799/14	Written procedure for the adoption of Council Decision and Council Regulation in July 2014 (also refers to the adoption of the Joint Council and Commission Declaration on a mechanism to optimize consistency in the application and monitoring of EU restrictive measures)	31 July 2014
7. RELEX MD 183/14	Draft EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures	1 September 2014
8. RELEX MD 183/14 REV 1	Draft EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures	1 September 2014
9. RELEX MD 183/14 REV 2	Draft EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures	3 September 2014
10. RELEX MD 183/14 REV 3	Draft EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures	8 September 2014
11. RELEX MD 183/14 REV 4	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures	8 September 2014

Document reference	Subject of the document	Date of the document
12. RELEX MD 209/14	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of issues for discussion	11 September 2014
13. RELEX MD 209/14 REV 1	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of issues for discussion	11 September 2014
14. RELEX MD 209/14 REV 2	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of issues for discussion	12 September 2014
15. RELEX MD 209/14 REV 3	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of issues for discussion	19 September 2014
16. RELEX MD 209/14 REV 4	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of issues for discussion	29 September 2014
17. RELEX MD 209/14 REV 5	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of issues for discussion	2 October 2014
18. RELEX MD 209/14 REV 6	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of issues for discussion	6 October 2014
19. RELEX MD 209/14 REV 7	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of issues for discussion	10 October 2014
20. RELEX MD 209/14 REV 8	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of issues for discussion	14 October 2014
21. Non-paper by the Presidency	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of settled issues	25 September 2014

Document reference	Subject of the document	Date of the document
22. Non-paper by the Presidency	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of settled issues	10 October 2014
23. Non-paper by the Presidency	EU sanctions mechanism to optimize consistency in the application and monitoring of EU restrictive measures: List of settled issues	14 October 2014
24. RELEX MD 209/14 ADD 1	Observations by the Presidency on Regulation 833/2014	11 September 2014
25. RELEX MD 209/14 ADD 2	Preliminary interpretation of a Member State of EU Sanctions against Russian banks in regard to export credits	11 September 2014
26. RELEX MD 209/14 ADD 3	CWG Understanding of the Sanctions Mechanism	1 October 2014
27. Non-paper by a Member State	Russia Sanctions Regulations	8 September 2014
28. Non-paper by a Member State	Question on the Implementation of Article 1(3) of Council Decision amending Decision 2014/512/CFSP concerning restrictive measures in view of Russian's actions destabilizing the situation in Ukraine	10 September 2014
29. E-mail sent by a Member State	Implementation of sanctions against Russia	4 September 2014
30. E-mail correspondence between a Member State, the Presidency and the Commission	EU Sanctions Mechanism	18-24 September 2014
31. E-mails sent by two Member States	EU Sanctions Mechanism	25 September 2014
32. Reply from a Member State referring to the e-mail correspondence referred to in nr 30	EU Sanctions Mechanism	26 September 2014
33. C(2014) 9950 final	Commission Notice of 16 December 2014: Commission Guidance note on the implementation of certain provisions of Regulation (EU) No 833/2014	16 December 2014

You may have full public access to documents **1-6, 11** and **33**. Documents nr. 4, 5 and 6 were already sent to you on 6 October 2014 with the reply to your request for public access with reference nr. 14/1424.

Documents **7-10** set out preliminary drafts of the EU restrictive measures mechanism to optimize consistency in the application and monitoring of EU restrictive measures. The General Secretariat has assessed each of these documents individually and for each of them has come to the conclusion that releasing these documents to the public, especially at this sensitive period of time, would allow third states to assess the level of convergence of positions within the Council and potentially exploit differences among the Member States relating to the application and monitoring of the sanctions. For this reason, public access has to be refused for each document under Article 4(1)(a), third indent (protection of the public interest as regards international relations) of Regulation 1049/2001.

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. It has determined that the above-mentioned exception does not apply to parts of documents under reference nr. **8, 9** and **10**; these parts can therefore be disclosed. As to document under reference nr. **7**, the General Secretariat has determined that it is covered by the above-mentioned exception in its entirety and that partial access to this document is therefore not possible.

Documents **12-23** set out revised versions of Presidency tables pertaining to internal discussions on issues deemed necessary to optimise the application and monitoring of EU restrictive measures. The General Secretariat has assessed each of these documents individually and come to the conclusion that each of them reveals details on potential loopholes in the design, implementation and interpretation of EU restrictive measures. If such details were released, it would give third parties insights into such potential loopholes. Releasing this information would thus be detrimental to the Union's ability to use restrictive measures to their maximum effect. For this reason, public access to each of these documents has to be refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations) of Regulation 1049/2001.

Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed for each of these documents whether any part of these documents would not fall under the above-mentioned exception but determined that this is not the case. It is therefore not possible to grant partial access to these documents.

Documents **24-32** all relate to the interpretation of the EU restrictive measures. The General Secretariat has assessed each of these documents individually and come to the conclusion that each document reveals details on potential loopholes in the design, implementation and interpretation of these measures. Releasing such details would give third parties insights into such potential loopholes. Releasing this information would thus be detrimental to the Union's ability to use restrictive measures to their maximum effect. For this reason, public access to each of these documents has to be refused under Article 4(1)(a), third indent (protection of the public interest as regards international relations) of Regulation 1049/2001.

Pursuant to Article 4(6) of the Regulation, the General Secretariat has assessed for all these documents whether any part of them would not fall under the above-mentioned exception but determined that this is not the case. It is therefore not possible to grant partial access to these documents.

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.³

Yours sincerely,

For the General Secretariat

Jakob THOMSEN

Enclosures

³ 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: Wednesday, February 18, 2015 09:57

To: SECRETARIAT DGF Access

Subject: Confirmatory application : your ref. 14/2110-bd/mi - DELETED

Dear Sirs,

Please see the attached confirmatory application, in relation to our request for access to documents registered under reference number 14/2110-bd/mi.

Also attached, for your reference, are copies of our request for access to documents (15.12.2014) and the Council's initial response (05.02.2015).

Yours faithfully,

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18 February 2015

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: DELETED
Your ref: 14/2110-bd/mi

Dear Sirs

Confirmatory Application Requesting the Council to Reconsider its Decision of 5 February 2015

We refer to our request for access to documents dated 15 December 2014 ("the request") and to your letter dated 5 February 2015 ("the initial decision"). In accordance with Article 7(2) of Regulation (EC) No 1049/2001 of the European Parliament and the Council regarding public access to European Parliament, Council and Commission documents ("the Regulation") we hereby submit a confirmatory application, requesting the Council to reconsider its initial decision.

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

Grounds for reconsideration

1. We seek a reconsideration of the initial decision on the ground that the law, facts and matters involved did not and do not justify the Council's initial decision that disclosure of documents [7],[12]-[32] and/or full disclosure of documents [8]-[10] 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.
2. 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,

3. 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.”¹ 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.”² 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 risk of the interest being undermined must be reasonably foreseeable and not purely hypothetical”³ (emphasis added).
4. 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.
5. In particular, and without prejudice to the generality of the arguments articulated in paragraph 4 above:
 - a. The Council refused access to document [7] and granted only partial access to documents [8]-[10] on the ground that “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 among the Member States relating to the application and monitoring of the sanctions”. 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”. Further, the Council’s explanation for its failure to grant public access to these documents is abstract and un-particularised (what sensitive time? which third states?) and is unsupported by evidence. Moreover, the Council has

¹ 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.

² C-404/10 P, *Commission v Editions Odile Jacob* ECLI:EU:C:2012:393 [116]; *Sophie in’t Veld* [51].

³ 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].


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/or that the risk of the public interest as regards international relations is reasonably foreseeable and not purely hypothetical.

- b. The Council refused access to documents [12]-[32] on the ground that disclosure would *"give third parties insights into ... potential loopholes"* and *"releasing this information would thus be detrimental to the Union's ability to use restrictive measures to their maximum effect."* By the Council's own admission, therefore, the risk to the public interest in disclosing these documents is no more than *"potential"*. Moreover, even assuming that disclosure of these documents would enable third countries to profit from information concerning potential loopholes in the EU restrictive measures (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."* Further, even assuming that release of these documents would be detrimental to the Union's ability to use restrictive measures (which, again, 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 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.
- c. The Council refused to grant even partial access to any of documents [12]-[32], asserting in each case that *"it has been assessed for each of these documents whether it would be possible to provide partial access"* but *"partial access is not possible."* That explanation was inadequate. It is impossible for the public (or, indeed, the Court) to determine whether the decision to refuse even partial access to these documents was well-founded. Further, the Council has failed to demonstrate how partial disclosure of these documents could specifically and actually undermine the public interest and has failed to show that the risk of the public interest being undermined is reasonably foreseeable and not purely hypothetical.

6. We respectfully ask the Council to reconsider its position.

Yours faithfully,

DELETED



Enc