



Council of the
European Union

Brussels, 24 June 2019
(OR. en)

10627/19

INF 202
API 73

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 16/c/01/19

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 10 May and registered on 13 May 2019 (Annex 1);
- reply from the General Secretariat of the Council dated 5 June 2019 (Annex 2);
- confirmatory application dated 23 June and registered on 24 June 2019 (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 10 May 2019 - 19:44 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of:

Address: **DELETED**

Telephone:

Mobile:

Fax:

Requested document(s): The following document is requested:

Recommendation for a Council Decision authorising the opening of negotiations on an agreement between the European Union and the Russian Federation on the operation of the Nord Stream 2 pipeline; document number: ST 10249 2017 INIT; document date: 12.6.2017

1st preferred linguistic version: EN - English

2nd preferred linguistic version: DE - German

[E-mail message sent to access@consilium.europa.eu on 10 May 2019 - 19:47 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of:

Address: **DELETED**

Telephone:

Mobile:

Fax:

Requested document(s): The following document is requested:

Recommendation for a Council Decision authorising the opening of negotiations on an agreement between the European Union and the Russian Federation on the operation of the Nord Stream 2 pipeline; document number: ST 10249 2017 ADD 1; document date: 12.6.2017.

1st preferred linguistic version: EN - English

2nd preferred linguistic version: DE - German



Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Head of Unit

Brussels, 5 June 2019

DELETED

Email: **DELETED**

Ref. 19/1201-mj/ns

Requests made on: 10.05.2019

Registered on: 13.05.2019

Dear **DELETED**,

Thank you for your requests for access to documents of the Council of the European Union.¹

I regret to inform you that access to documents 10249/17 and 10249/17 ADD 1 cannot be given for the reasons set out below.

These documents are classified documents, bearing the classification "RESTREINT UE/EU RESTRICTED" which means that the unauthorised disclosure of their content could be disadvantageous to the interests of the European Union or of one or more of its Member States.²

¹ The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

² Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU), OJ L 274, 15.10.2013, p. 1.

Document **10249/17 RESTREINT UE/EU RESTRICTED** is a Note of 12 June 2017 from the Secretary General of the European Commission to the Secretary General of the Council of the European Union which contains a *Recommendation for a Council Decision authorising the opening of negotiations on an agreement between the European Union and the Russian Federation on the operation of the Nord Stream 2 pipeline.*

Document **10249/17 ADD 1 RESTREINT UE/EU RESTRICTED** is a Note of 12 June 2017 from the Secretary General of the European Commission to the Secretary General of the Council of the European Union which contains *the annex to the Recommendation for a Council Decision authorising the opening of negotiations on an agreement between the European Union and the Russian Federation on the operation of the Nord Stream 2 pipeline.*

The negotiations referred to in these documents have not yet started. Disclosure of the information contained therein would impede the proper conduct of the negotiations and prejudice relations between the European Union and the Russian Federation.

Should its internal views and negotiation strategy be made public before the opening of the negotiations, the position of the Union in such international negotiations would be seriously weakened. Disclosure of the documents would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to the documents.³

We have also looked into the possibility of releasing parts of the documents.⁴ However, as the exception to the right of access applies to their entire content, the General Secretariat is unable to give partial access.

We would like to inform you that the European Commission issued a press release entitled "Commission seeks a mandate from Member States to negotiate with Russia an agreement on Nord Stream 2" on 9 June 2017. It is accessible via the following link:

http://europa.eu/rapid/press-release_IP-17-1571_en.htm

³ Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

⁴ Article 4(6) of Regulation (EC) No 1049/2001.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).⁵

Yours sincerely,

Paulo VIDAL

⁵ Article 7(2) of Regulation (EC) No 1049/2001.
Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EU) No 2018/1725, if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

From: **DELETED**

Sent: Sunday, June 23, 2019 1:08 PM

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: AW: Ref. 19/1201-mj/ns

Confirmatory application in accordance with Regulation 1049/2001 – Ref. 19/1201-mj/ns

To Whom It May Concern:

By letter dated 5 June 2019, the Council refused access to documents 10249/17 and 10249/17 ADD 1 in their entirety.

The Council states that:

- Document 10249/17 is a Note of 12 June 2017 from the Secretary General of the European Commission to the Secretary General of the Council of the European Union which contains a Recommendation for a Council Decision authorising the opening of negotiations on an agreement between the European Union and the Russian Federation on the operation of the Nord Stream 2 pipeline ("Recommendation for a Council Decision to authorise negotiations on a Nord Stream 2 treaty"); and
- Document 10249/17 ADD 1 is a Note of 12 June 2017 from the Secretary General of the European Commission to the Secretary General of the Council of the European Union which contains the annex to the Recommendation for a Council Decision to authorise negotiations on a Nord Stream 2 treaty.

The Council refuses access to the documents above on the basis that this would undermine the public interest as regards international relations. In this regard, the Council states:

- The negotiations referred to in these documents have not yet started. Disclosure of the information contained therein would impede the proper conduct of the negotiations and prejudice relations between the European Union and the Russian Federation.
- Should its internal views and negotiation strategy be made public before the opening of the negotiations, the position of the Union in such international negotiations would be seriously weakened. Disclosure of the documents would therefore undermine the protection of the public interest as regards international relations.

The Council also notes that the documents bear the classification "RESTREINT UE/EU RESTRICTED" which means that the unauthorised disclosure of their content could be disadvantageous to the interests of the European Union or of one or more of its Member States.

This email constitutes a confirmatory application in accordance with Article 7(2) of Regulation 1049/2001. The Council is requested to reconsider its decision, taking into account the points below.

- First, the fact that the documents are classified as "RESTREINT UE/EU RESTRICTED" is not relevant. Indeed, they are not even the types of documents that fall within the scope of Article 9 of Regulation 1049/2001 (which must be handled according to certain procedures but whose non-disclosure must still be justified by exceptions in any event).
- Second, the press release that the Council refers to indicates that the Recommendation for a Council Decision to authorise negotiations on a Nord Stream 2 treaty was put forth for the purpose of ensuring that EU rules apply to Nord Stream 2. The EU has recently adopted Directive 2019/692 which, unlike was previously the case, makes EU rules contained in the EU Gas Directive applicable to Nord Stream 2. Now that this goal is achieved, it is unclear why disclosure of the Recommendation (and associated annex) should be viewed as giving rise to risks that would specifically and actually undermine international relations (or that are otherwise reasonably foreseeable). This is especially the case since the Commission register shows that Recommendations for Council Decisions to open negotiations are regularly made public shortly after they are submitted to the Council, and before any formal Council Decision on the subject.

It is also worth noting that at least the main part of the Commission Recommendation is available to the public on the internet. In this context, it is almost certain that the Russian Government will have seen at least the Recommendation. Thus, any risk that disclosing the Recommendation could undermine any interests as regards international relations appears manifestly unfounded. To the extent that disclosing the main part of the Commission Recommendation is unfounded, the same conclusion should be drawn for the associated annex.

The Council's prompt reply to this confirmatory application is appreciated.

Sincerely,

DELETED
