



Council of the  
European Union

Brussels, 20 February 2023  
(OR. en)

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**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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Subject: Public access to documents  
- Confirmatory application No 04/c/01/23

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Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 8 December 2023 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 26 January 2023 (Annex 2);
- the confirmatory application dated 10 February 2022 and registered on the same day (Annex 3).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on Thursday, 18 December 2022 13:12 using the electronic form available in the Register application]

**From:** document-request@consilium.europa.eu <document-request@consilium.europa.eu>

**Sent:** 08 December 2022 13:12

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

**Subject:** Consilium - Electronic Request for Access to documents [GERMAN]

This e-mail has been sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) using the electronic form available in the Register application.

This electronic form has been submitted in GERMAN.

**DELETED**

**Familiennamen**

**DELETED**

**Vorname**

**DELETED**

**E-Mail-Adresse**

**DELETED**

**Beruf**

**Handelnd für**

**Vollständige Postanschrift**

**Telefonnr.**

**Mobiltelefonnr.**

**Fax-Nr.**

**Gewünschtes Dokument / gewünschte Dokumente**

14133/22

**1. Wahl**

EN

**2. Wahl**

DE



**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, 26 January 2023

**DELETED**

E-mail: **DELETED**

Ref. 22/2788-jdg/nb

Request made on: 08.12.2022

Deadline extension: 09.01.2023

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.<sup>1</sup>

I regret to inform you that access to document **ST 14133 2022 INIT** cannot be granted for the reasons set out below.

Document ST 14133 2022 INIT is a note from the Presidency to Coreper in legislative file **2021/0297(COD)** - Regulation on applying a generalised scheme of tariff preferences and repealing Regulation (EU) No **978/2012** of the European Parliament and of the Council (GSP). It contains a draft mandate for starting negotiations. However, Coreper did not endorse the draft mandate, and the issue is still under discussion within the preparatory bodies of the Council with a view to reaching agreement on a new draft mandate.

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<sup>1</sup> 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).

Release to the public of the information contained in ST 14133 2022 INIT would affect the negotiating process and diminish the chances of the Council reaching such agreement.

Disclosure of the document at this stage would therefore seriously undermine the decision-making process of the Council. As a consequence, the General Secretariat has to refuse access to the document at this stage.<sup>2</sup>

Having examined the context in which the document was drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in its disclosure.

Yours sincerely,

Fernando FLORINDO

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<sup>2</sup> Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on Friday, 10 February, 2023 15:23]

**From:** **DELETED**

**Sent:** 10 February 2023 15:23

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

**Subject:** Re: U.Z.: 22/2788-jdg/vk

Your letter of 26 January 2023 — Your letter 22/2788-jdg/vk

Please find attached my confirmatory application pursuant to Article 7(2) of Regulation (EC) No 1049/2001 concerning access to document ST 14133 2022 INIT. The request is made as of today (10.2.) (the date on the letter has been manually corrected by me).

With kind regards

**DELETED**

Council of the European Union  
General Secretariat  
Unit for Information Services/Transparency

**Subject: 22/2788 JDG/vk Confirmatory application for access to document ST 14133 2022  
INIT**

Dear Mr Florindo,

By letter of 26 January 2023, the Council informed me that my application for access to the above-mentioned document was rejected on the basis of the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

Pursuant to Article 7(2) of the above-mentioned Regulation, I would like to request that you reconsider your position.

I lecture in EU legislative procedure at the University of Cologne. My students comprise law students as well as students from other faculties as part of the ‘*Studium Integrale*’ [supplementary interdisciplinary courses], with European law usually being a new topic to the latter group. It is my aim to make the students more familiar with the EU’s procedures and institutions, and thus to better equip them in terms of forming political opinions and democratic participation. Having recourse to ongoing legislative procedures is precisely what makes it possible to arouse students’ interest and to introduce them in real time, as it were, to debates that are often complex, and, using the differing positions taken by the Commission, the European Parliament, the Council and the consultative bodies, as well as by stakeholders and NGOs, to challenge the myth of incomprehensible ‘Brussels decisions’. As co-organiser of the annual interdisciplinary ‘Cologne Summer School on European Legal Linguistics’, which simulates an ongoing legislative procedure on the basis of publicly accessible texts, it is my aim, and that of my co-organisers, to enhance understanding of EU legislative decision-making processes and thus help to bring this subject closer to citizens. However, the process of forming political opinions also involves gaining an understanding, on the basis of the discussions as well as the different or alternative versions of the texts, of the steps that lead to majority decisions in the Council (or in the Parliament).

My colleagues and I thus rely on access to documents, and on openness and transparency - as well as the frequently invoked closeness to citizens - not remaining empty words. There is without doubt an overriding public interest in this.

In respect of procedure 2021/0297(COD), which began with the Commission's proposal of 22.9.2021, there are no Council documents in the register dating from before 25 November 2022, i.e. there was more than a year without any status updates - commonly published in such procedures -, without any report about any orientation debates, without any trace of the work on the proposal. While EU citizens have been able to gain an overview of the different positions, ultimately approved by majority, on the basis of the debates and documents of the European Parliament from the draft report of 6 January 2022 to the Committee report of 17 May 2022, the requested document ST 14133 2022 INIT represents the very first possibility for EU citizens to gain an idea of the position(s) represented in the Council. It is precisely by comparing presumably different texts that it is possible to understand the formation of opinions in the Council and thereby to form one's own impression.

You write that ST 14133 2022 INIT contains 'a draft mandate to open negotiations', which, however, was not approved by Coreper. You further state that disclosure of the document at this stage would therefore seriously undermine the decision-making process of the Council.

I cannot concur with this line of argument. In the meantime, on 20 December 2022, Coreper approved a draft mandate (by majority or by consensus), as can be seen from the publicly accessible document ST 16270 2022 INIT. A revised draft mandate (ST 16074 2022 INIT) dated 16 December 2022 (i.e. before the Coreper meeting took place) can already be found in the document register, with the draft mandate itself being accessible, while the introductory note is (unfortunately) only partially accessible (deletions in points 3 and 4). This stage of decision-making in the Council was thus concluded on 20 December 2022 and can therefore no longer be seriously affected. The alleged interference seems to me to be very hypothetical.

The draft contained in ST 14133 2022 INIT and rejected by Coreper, which presumably contained alternative text, proposals that were more far-reaching in terms of content, or proposals that were less far-reaching than the mandate now approved, is not relevant for the phase that now follows. I am completely unable to comprehend how disclosure of this document could lead to the objectively foreseeable risk of specifically and actually seriously undermining the further decision-making process, which will rely expressly on the negotiating position contained in ST 16270 2022 INIT.

It is of course possible that the text contained in ST 16270 2022 INIT may be amended in the upcoming negotiations, especially taking into consideration the position of the European Parliament, which is accessible in document A9-0147/2022 (which also includes the complete opinions of the committees asked for an opinion, including the proposed amendments not taken on board by the committee responsible). The argument that, in the negotiations, the Council could fall back on a draft text that was rejected by Coreper as not capable of securing a majority, instead of the explicitly approved mandate, is unconvincing.

Would the disclosure of ST 14133 2022 INIT perhaps increase public pressure on the legislator(s) to a greater extent than is currently the case with the accessible documents ST 16074 2022 INIT and ST 16270 2022 INIT? In this context, the Court in Luxembourg has stated on a number of occasions that, ‘in a system based on the principle of democratic legitimacy, co-legislators must be held accountable for their actions to the public. If citizens are to be able to exercise their democratic rights they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information’ (most recently in paragraph 84, Case T-163/21, my emphasis).

(Complimentary close)

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