



Council of the
European Union

Brussels, 19 April 2023
(OR. en)

8310/23

INF 67
API 54

NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents
- Confirmatory application No 07/c/01/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 13 February 2023 and registered on the next day (Annex 1);
- the reply from the General Secretariat of the Council dated 27 March 2023 (Annex 2);
- the confirmatory application dated 5 April 2023 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Monday 13 February, 2023 17:53 using the electronic form available in the Register application]

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

Sent: lundi 13 février 2023 17:53

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

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

DELETED

Family name **DELETED**

First name **DELETED**

E-mail **DELETED**

Occupation **DELETED**

On behalf of

Full postal address **DELETED**

Telephone **DELETED**

Mobile telephone

Fax

Requested document(s)

I would like to see all documents in relation to individuals referred to in L332 I/p.404-p.414 of the Official Journal of the European Union, English version <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:322I:FULL&from=EN>, 16.12.2022, who are specifically designated for being involved in child trafficking from Ukraine to Russia.

This may or may not include reports by Council members or staff, presentations, memos, reports by EEAS staff on the ground in Ukraine and Russia etc.

I have already made a request to the EEAS, who referred me to you on this matter.

Best regards,

DELETED

1st option EN

2nd option FR



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, 27 March 2023

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E-mail: **DELETED**

Ref. 23/ 0429-lk/nb

Request made on: 13.02.2023

Registered on: 14.02.2023

Deadline extension: 07.03.2023

Dear **DELETED**,

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

We have identified the following 15 documents as relevant to your request :

ST 15260/22, ST 15261/22, ST 15262/22, ST 15263/22, WK 16462/22, WK 16417/22, WK 16455/22, WK 16508/22, WK 16624/22, WK 16418/22, WK 16419/22, WK 16659/22, WK 16661/22, WK 16645/22 and WK 16647/22

Documents **ST 15261/22** and **ST 15263/22** are freely accessible on the Council's [public register](#).

Please find attached partially accessible versions of documents **ST 15260/22** and **ST 15262/22**.² However, I regret to inform you that full access cannot be given for the reasons set out below.

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).

These documents contain two proposals of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a 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 and a 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. The proposals contain names and other personal data of individuals against whom the High Representative proposed the application of restrictive measures. The Council's acts, adopted on the basis of these proposals, do not contain all the individuals proposed.

The data protection rules at EU level³ provide that when the personal data collected is to be used for a different purpose, including disclosure to the public, a balance needs to be established between the public interest in having access to such data and the legitimate right of individuals to protect their personal data.⁴

After carefully considering all the principles related to this request, on balance the General Secretariat has concluded that disclosure of the personal data of individuals mentioned in the High Representative's proposals but mentioned in the Council's acts would unnecessarily and disproportionately undermine the protection of privacy and the integrity of the individuals concerned. As a consequence, the General Secretariat has to refuse access to these personal data.⁵

However, you may have access to the remaining parts of the documents, since they are not covered by any of the exceptions of Regulation (EC) No 1049/2001.

As regards documents **WK 16462/22, WK 16417/22, WK 16455/22, WK 16508/22, WK 16624/22, WK 16418/22, WK 16419/22, WK 16659/22, WK 16661/22, WK 16645/22 and WK 16647/22**, I regret to inform you that access to them cannot be given for the reasons set out below.

These documents are working papers drawn up by the European External Action Service containing personal data about individuals who allegedly benefitted from or supported actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine. They are meant to help the Council decide on the above mentioned proposals from the High Representative.

² Article 4(6) of Regulation (EC) No 1049/2001.

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (OJ L 295 21.11.2018, p. 39).

⁴ Article 9 of Regulation (EU) No 2018/1725.

⁵ Article 4(1)(b) of Regulation (EC) No 1049/2001.

These documents are sensitive. Although the content of these documents may originate from publicly available sources, the disclosure of these documents would have the effect of revealing how the Council reaches decisions in the delicate area of sanctions. Such disclosure would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to them.⁶

Furthermore, the data protection rules at EU level (EUDPR)⁷ provide that data subjects (in this case, the individuals mentioned in the documents) should in principle be informed prior to the further processing of their data to ensure that it is fair and transparent⁸. In this case, the "further processing" of personal data would occur when disclosing the documents. Moreover, the fact that the personal data in question might already be public does not, as such, alter this conclusion since Article 16(2)(e) EUDRP provides that, when informing the data subject, the controller should mention the source from which "personal data originate, and if applicable, whether it came from publicly accessible sources". This indicates that the obligation in question applies even if personal data have been gathered from publicly available sources. Although this right of information is not absolute, we consider that in the case at hand, it should prevail over other considerations.

After carefully considering all the principles related to this request, on balance the General Secretariat has concluded that disclosure of the personal data of these individuals would unnecessarily and disproportionately undermine the protection of privacy and the integrity of the individuals concerned. As a consequence, the General Secretariat has to refuse access to these personal data.⁹

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

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.

Yours sincerely,

Fernando FLORINDO

Enclosures: 2

⁶ Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

⁷ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (OJ L 295 21.11.2018, p. 39).

⁸ Article 16(4) of Regulation (EU) No 2018/1725.

⁹ Article 4(1)(b) of Regulation (EC) No 1049/2001.

[E-mail message sent to access@consilium.europa.eu on Wednesday, 5 April, 2023 16:35]

From: **DELETED**

Sent: mercredi 5 avril 2023 16:35

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

Subject: Re: Ref. 23/0429-lk/nb

Dear Sir/Madam,

I would like to appeal your decision. It is in the public interest for the collated research underlying EU decisions on sanctions against senior figures in the Russian government for child-trafficking to be known.

The seriousness of such charges has led to an ICC indictment against President Putin and his commissioner for children's rights, Maria Lvova-Belova for committing a crime against humanity -- with possible genocide charges to follow. Hence it behooves the public to evaluate the data already gathered on this serious matter.

Releasing these documents will also allow the public to weigh the appropriateness of the severity of existing sanctions against the Russian government.

In your response to me, you refer to the data protection implications of releasing your case file. From my admittedly narrow understanding of EU legislation, the Data Protection Directive ought not to apply to the subjects of my Fol request, who are all non-EU citizens.

Thank you for your response, and your further consideration.

Respectfully,

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