



Council of the
European Union

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Eingelangt am 17/08/23

Brussels, 17 August 2023
(OR. en)

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API 123

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 27/c/01/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 27 June 2023 and registered on 28 June 2023 (Annex 1);
- the reply from the General Secretariat of the Council dated 10 August 2023 (Annex 2);
- the confirmatory application dated 10 August 2023 and registered on 11 August (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Monday 27 June 2023, 20:33]

From: **DELETED**

Sent: Tuesday 27 June 2023 20:33

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

Subject: Documents concerning the appointment of Andrea Venegoni to the European Public Prosecutor's Office [#282620]

Application pursuant to EU Regulations [1049/2001](#) and [1367/2006](#)

Dear Sir or Madam,

On the basis of Regulations [1049/2001](#) and [1367/2006](#), I would be grateful if you could send me documents containing the following information:

- information regarding Andrea Venegoni;
- information regarding the appointment of Andrea Venegoni to the College of the European Public Prosecutor's Office;
- information relating to the appointment of an Italian member to the College;
- correspondence between Italy and the Council concerning the European Public Prosecutor's Office.

There is significant public interest in disclosure of this information, even if personal data are involved. The members of the European Public Prosecutor's Office have a great deal of responsibility and it is important for the public to be able to verify their independence. Regarding Mr Venegoni, there was press coverage recently (<https://www.politico.eu/article/italy-new-eu-prosecutor-criticism-over-judiciary-independence-epo/>), which is also indicative of increased public interest.

I would stress that I would like to receive a reply by email to this address and not via a web portal.
Please confirm receipt of this message. Thank you.

(Complimentary close)

DELETED



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, 10 August 2023

DELETED

Email: **DELETED**

Ref. 23/1955-em/ns

Request made on: 27.06.2023

Registered on: 28.06.2023

Deadline extension: 19.07.2023

Dear **DELETED**,

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

We have identified the following documents as related to your request:

- **12175/19** – Appointment of European Prosecutors – Internal process to be followed within the Council (dated 18/09/2019);
- **9878/23** – CVs and motivation letters of the Italian candidates (dated 26/05/23) (**RESTREINT UE/EU RESTRICTED**);
- **10037/23** - written remarks submitted by Italy in relation to the ranking and reasoned opinion of the selection panel with respect to the merits of the candidates it nominated; (dated 1/06/23) (**RESTREINT UE/EU RESTRICTED**);
- **10037/23 ADD1** - reasoned opinion of *Consiglio Superiore della Magistratura* of 21 July 2022 on the establishment of the list of three Italian candidates for the post of European Prosecutor (dated 5/06/23) (**RESTREINT UE/EU RESTRICTED**);

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).

- **10237/23** – the note to CRP/Council on the EPPO: partial renewal of the College - Appointment of eight European Prosecutors – 2023 (dated 16/06/23);
- **10251/23** – the Council Decision appointing the European Prosecutors of the European Public Prosecutor's Office (dated 16/06/23).

You will find enclosed documents **12175/19**, **10237/23** and **10251/23**.

I regret to inform you that for the reasons set out below, access to documents **9878/23**, **10037/23** and **10037/23 ADD1** cannot be granted.

These documents are classified documents, bearing the classification "RESTREINT UE/EU RESTRICTED". This means that the unauthorised disclosure of their contents could be disadvantageous to the interests of the European Union or of one or more of its Member States.² Access to these documents should therefore be refused as classified documents and in order to protect the confidentiality of the decision-making process³ that led to the appointment decision of the Italian nominee, including Italy's written remarks thereon, the commercial interests⁴ and the personal data⁵ of the persons concerned.

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 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.

³ Article 4(3), second subparagraph of Regulation (EC) n°1049/2001.

⁴ Article 4(2), first indent of Regulation (EC) n°1049/2001.

⁵ Article 4(1)(b) of Regulation (EC) n°1049/2001.

[E-mail message sent to access@consilium.europa.eu on Thursday, 10 August 2023, 21:22]

From: **DELETED**

Sent: Thursday 10 August 2023 21:22

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

Subject: RE: Our ref.: 23/1955-em/ns [#282620]

Dear Sir or Madam,

I hereby submit a confirmatory application pursuant to Regulation (EC) No 1049/2001 and request that the Council's position on the applicability of exceptions be reconsidered.

The mere fact that a document is classified as RESTREINT UE/EU RESTRICTED does not mean that the right of access to documents is excluded. The Council would have to explain in detail the contents of the documents and why such contents are covered by the exceptions set out in Article 4(1 to 3) of Regulation (EC) No 1049/2001. If only parts of a given document were covered by one of the exceptions, the rest of that document would have to be released, as is clear from Article 4(6).

My application also demonstrates the existence of a particular public interest. However, your letter does not indicate that you have weighed the public interest in disclosure of the requested documents against the interests of the Council or third parties meriting protection.

In this respect, access to the documents classified as RESTREINT UE/EU RESTRICTED will – at least to a large extent – also have to be granted.

(Complimentary close)

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