



Council of the  
European Union

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Eingelangt am 31/08/23

Brussels, 31 August 2023  
(OR. en)

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API 137

#### NOTE

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 28/c/02/23

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Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 14 July 2023 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 29 August 2023 (Annex 2);
- the confirmatory application dated 30 August 2023 and registered on the same day (Annex 3).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on Friday 14 July 2023, 14:36]

**From:** **DELETED**

**Sent:** 14 July 2023 14:36

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

**Subject:** The Frontex Risk Analysis for 2023/2024 [#283918]

Application under EU Regulations 1049/2001 and 1367/2006

Hello,

on the basis of Regulations 1049/2001 and 1367/2006, please send documents containing the following information:

The Frontex Risk Analysis for 2023/2024 produced in Warsaw in May 2023 and distributed as WK 7580/2023 INIT.

I expressly point out that I would like to receive a reply by e-mail to this address and not via a web portal. I would like to ask you for an acknowledgement of receipt and thank you for your effort!

Sincerely,

**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, 29 August 2023

**DELETED**

Email: **DELETED**

Ref. 23/2146 rh/nb

Request made on: 14.07.2023

Extended on: 07.08.2023

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 **WK 7580/2023** cannot be given for the reasons set out below.

As a preliminary remark, please note that document **WK 7580/2023** is a classified document, bearing the classification "RESTREINT UE/EU RESTRICTED". This means that the unauthorised disclosure of its content could be disadvantageous to the interests of the European Union or of one or more of its Member States.<sup>2</sup>

Document **WK 7580/2023** is a note from the General Secretariat of the Council to the **Working Party on Frontiers** containing a *Risk analysis for 2023/2024* produced by Frontex.

<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).

<sup>2</sup> 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.

More specifically, document **WK 7580/2023** contains sensitive information obtained in cooperation with a Member State of the European Union regarding the effectiveness of border security measures. The disclosure of such information would reveal existing vulnerabilities which, once public, could be exploited by criminal networks involved in migrant smuggling, trafficking in human beings and thus undermine the protection of the public interest as regards public security as laid down in Article 4(1)(a), first indent of Regulation (EC) 1049/2001.

Furthermore, the requested document contains analyses and subjective assessments of the internal situation in third countries with explicit references to existing strengths and vulnerabilities. Effective cooperation with third countries is crucial for Frontex, and therefore a unilateral disclosure of the document must be refused as establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise. The release of the document would end the mutual trust enjoyed between the third countries in question and Frontex. Once the relationship between Frontex and third countries is impaired, there would be an ascertainable likelihood that these countries would no longer share sensitive data with Frontex. This would not only impede the improvement of pre-warning mechanisms necessary to analyse the migratory flows towards the European Union but would also hinder the development of adequate tools, at both European Union and national levels, that are necessary to conduct efficient border control and prevent cross-border crime, such as the facilitation of irregular immigration and trafficking in human beings. As this risk is reasonably foreseeable, disclosing this information would undermine the protection of the public interest as regards public security and international relations. Consequently, access to the document has to be refused pursuant to Article 4(1)(a), first and third indent of Regulation (EC) No 1049/2001.

Detailed information contained in the document is crucial for situational awareness at the external borders of the European Union which is used by Frontex to conduct its operational activities and to develop risk analyses. The disclosure of this information would hamper the effectiveness of Frontex operations and jeopardise the efforts carried out by the European Union and Member States to curtail criminal activities at the external borders. It would thus benefit criminal networks especially those involved in people smuggling and trafficking in human beings, which would put the life of migrants in danger. Hence, the disclosure of such information would undermine the protection of the public interest as regards public security and has to be refused based on Article 4(1)(a), first indent of Regulation (EC) No 1049/2001.

The information is also used for the development of risk analyses, which constitute a specific form of internal decision-making processes based on the intelligence derived from previous and presently ongoing activities and have a bearing on the conduct of current and future operations. Being an important base for determining the strategic orientation of the Agency, the possibility to conduct such analyses without interference is fundamental for Frontex to effectively exercise its mandate. Consequently, releasing this information would enable third parties to gain insights into this decision-making process and, with ascertainable likelihood, result in depriving Frontex of the possibility to conduct such analyses wholly independently, free from any external pressure or third-party influence. In sum, releasing this information into the public domain would seriously undermine Frontex internal decision-making processes. As no overriding public interest that is objective and general in nature and not indistinguishable from individual or private interests for the release of this information is ascertainable in the present case, this information cannot be released based on Article 4(3) of Regulation (EC) No 1049/2001.

We have also looked into the possibility of releasing parts of the document.<sup>3</sup> However, as the information contained in the document forms an inseparable whole, the General Secretariat is unable to give partial access.

The present reply to your request for public access to Council documents has been drafted in English since your request is partly in German and partly in English. Please let us know in case you wish to receive a German text. We are ready to request a German translation and send it to you.

Please note that you are intitled, within 15 working days of receiving the present reply, ask the Council of the European Union to reconsider its position by making a confirmatory application pursuant Article 7(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. Should you see the need for such an application, you are invited to indicate the reasons thereof.<sup>4</sup>

Yours sincerely,

Fernando FLORINDO

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<sup>3</sup> Article 4(6) of Regulation (EC) No 1049/2001.

<sup>4</sup> 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.

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on Friday, 30 August 2023, 08:25]

**From:** **DELETED**

**Sent:** 30 August 2023 08:25

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

**Subject:** IAW: Ref. 23/2146 rh/nb [#283918]

Dear Sir or Madam,

I do not agree with your decision and am lodging an objection.

I must ask you to review the refusal to grant at least partial access – for example, why you are unwilling to disclose the table of contents or the introductions and conclusions of individual chapters. I would request that reasons be given for these decisions individually.

(Complimentary close)

**DELETED**

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