



Council of the  
European Union

152712/EU XXVII. GP  
Eingelangt am 08/09/23

**Brussels, 8 September 2023  
(OR. en)**

**12764/23**

**INF 195  
API 145**

#### **NOTE**

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 30/c/04/23

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Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 21 July 2023 and registered on 24 July 2023 (Annex 1);
- the reply from the General Secretariat of the Council dated 5 September 2023 (Annex 2);
- the confirmatory application dated 6 September 2023 and registered on the same day (Annex 3).

From: **DELETED**

Sent: Friday, July 21, 2023 1:50 PM

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

Subject: access to documents request - Non-papers on COE convention on environmental protection

Dear Council of the European Union,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

- Non-paper prepared by the Commission services concerning the draft Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law - Revised draft submitted by the Commisison services: 11969/23 LIMITE
- Non-paper on a coordinated EU position in view of the forthcoming negotiations on a draft Council of Europe Convention on the protection of the environment through criminal law - Comments from Member States on the text in: 12031/23 LIMITE

Yours faithfully,

**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, 5 September 2023

**DELETED**

Email: **DELETED**

Ref. 23/2213-mw/mf

Request made on: 21.07.2023

Registered on: 24.07.2023

Deadline extension: 14.08.2023

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 documents **11969/23** and **12031/23** cannot be given for the reasons set out below.

Document **11969/23** of 21 July 2023 is a document from the General Secretariat of the Council to Delegations. It contains a Non-paper prepared by Commission services concerning the draft Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law.

Document **12031/23** of 20 July 2023 is a document from the General Secretariat of the Council to Delegations. It contains a Non-paper on a coordinated EU position in view of the forthcoming

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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).

negotiations on a draft Council of Europe Convention on the protection of the environment through criminal law.

The Commission services, consulted as author of document 11969/23, consider that access cannot be granted to this document.

Disclosure of the information contained in documents 11969/23 and 12031/23 could have an impact on future discussions held in the context of international organisations. It would affect the Union's coordinated position regarding third countries and could lead to external pressure from third countries when negotiating or interpreting certain provisions of future agreements, which could be detrimental for the Union's position.

Disclosure of the documents would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat is not able to grant you access to the documents.<sup>2</sup>

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

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<sup>2</sup> Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

From: **DELETED**

Sent: Wednesday, September 6, 2023 9:47 AM

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

Subject: Internal review of access to documents request - Non-papers on COE convention on environmental protection

Dear Council of the European Union,

Please pass this on to the person who reviews confirmatory applications.

I am filing the following confirmatory application with regards to my access to documents request 'Non-papers on COE convention on environmental protection'.

The Court of Justice of the EU has said that the risk of jeopardizing international relations must be reasonably foreseeable and not purely hypothetical (see CJEU, 21 July 2011 **Case C-506/08 P**, Sweden v MyTravel and Commission) and that the institution must show that the document requested specifically and actually undermines the interest protected by the exception (see CJEU, 28 November 2013, **Case C-576/12 P**, Ivan Jurasinovic v Council of the European Union, paragraph 45.) It is necessary to show that disclosure would undermine the public interest as regards international relations based on the content of the document or documents in question. The mere fact that a document concerns an interest protected by an exception is not of itself sufficient to justify application of that exception (**Case T-2/03 Verein für Konsumenteninformation v Commission** [2005] ECR II-1121, paragraph 69). In principle, such an application can be justified only if the institution has previously determined, first, that access to the document was likely, specifically and actually, to undermine the protected interest.

As the content of the documents are preparatory to two conventions meant to alter international law and further might have an on law-making in the EU, I find it reasonable to ask for disclosure under recital 6 of Regulation 1049 providing for wider access "in cases where institutions are acting in their legislative capacity".

Yours faithfully,

**DELETED**