



Council of the  
European Union

153299/EU XXVII. GP  
Eingelangt am 13/09/23

Brussels, 13 September 2023  
(OR. en)

12960/23

API 152  
INF 202

#### NOTE

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 32/c/05/23

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Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 13 July 2023 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 25 August 2023 (Annex 2);
- the confirmatory application dated 12 September 2023 and registered on the 13 September (Annex 3).

From: **DELETED**

Sent: Thursday, July 13, 2023 9:46 AM

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

Subject: access to documents request - Request by US on Belarus documents

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:

- Access to document "Restrictive measures against Belarus/Request for access to documents by the United States/Launch of the written consultation", WK 9185/23
- All documents related to this request by the United States

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, 25 August 2023

**DELETED**

Ref. 23/2126-vl/mf

Request made on: 13.07.2023

Deadline extension: 04.08.2023

Dear **DELETED**,

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

The following documents have been identified as corresponding to your request:

- **WK 13524/1/2021 REV 1**
- **WK 17497/2022**
- **WK 9185/2023.**

Please find enclosed a partially accessible version of document **WK 9185/2023**. Through this document, the General Secretariat recently launched a consultation with the Member States through its **Working Party of Foreign Relations Counsellors** as regards a request by the United States' authorities for access to documents focusing on restrictive measures against Belarus.

You may have access to the whole content of this document, except to the information in the 2<sup>nd</sup> and 3<sup>rd</sup> line of the 1<sup>st</sup> paragraph of the document, that identifies the elements of interest of the USA concerning the abovementioned regime of restrictive measures. Should that information be disclosed, it would reveal the specific focus area of the USA authorities' investigations and would enable hostile entities to acknowledge the take action to undermine the EU's and its international

<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).

partner countries' strategy in this sensitive field, causing prejudice to international relations.

Consequently, full access to document **WK 9185/2023** cannot be granted.<sup>2</sup> However, you may have access to all the remaining content of the document (almost full text), as it is not covered by any of the exceptions to disclosure in Regulation (EC) No 1049/2001.

Moreover, I regret to inform you that access to documents **WK 13524/1/2021 REV 1** and **WK 17497/2022** cannot be given for the reasons set out below.

Documents **WK 13524/1/2021 REV 1** and **WK 17497/2022** are working documents drawn up by the European External Action Service for the Council Working Party on Eastern Europe and Central Asia and the Council Working Party of Foreign Relations Counsellors, containing underlying/supporting evidence concerning Belarus in the context of EU's restrictive measures.

Following our internal consultations, the General Secretariat is of the opinion that, given the sensitive nature of the information contained in these two documents, which include persons' identities, their release to the public would cause a breach of personal data, hence undermine the privacy and integrity of those individuals is mentioned therein.

Moreover, their disclosure would cause prejudice to the mutual trust between the EU and its partner countries that are exchanging such confidential information in the context of the necessary close cooperation to efficiently and effectively implement the restrictive measures provisions. Hence, this would undermine public interest as regards international relations.

Consequently, public access to these two documents must be refused.<sup>3</sup>

We have also looked into the possibility of releasing parts of documents **WK 13524/1/2021 REV 1** and **WK 17497/2022**.<sup>4</sup> However, as the information contained therein forms an inseparable whole, 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

Enclosure

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

<sup>3</sup> Article 4(1)(a), third indent and Article 4(b) of Regulation (EC) No 1049/2001.

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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

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

From: **DELETED**

Sent: Tuesday, September 12, 2023 9:53 PM

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

Subject: Internal review of access to documents request - Request by US on Belarus documents

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 'Request by US on Belarus documents'.

I ask the Council to clarify whether the United States asked for access to documents under Regulation 1049/2001. If so, the principle of equality before the law should mean that I be granted access to the same documents that the US was given access to. If another legal basis was used for granting the United States access to documents, I kindly ask to specify.

As regards the international relations exception invoked, 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. I ask to provide a clear reasoning in this case.

As regards the privacy exception invoked, it should suffice to redact the names of the persons in question.

Yours faithfully,

**DELETED**