



Council of the
European Union

157476/EU XXVII. GP
Eingelangt am 16/10/23

Brussels, 16 October 2023
(OR. en)

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INF 225
API 164

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 34/c/06/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 21 September 2023 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 12 October 2023 (Annex 2);
- the confirmatory application dated 13 October 2023 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Thursday 21 September 2023, 11:33]

From: **DELETED**

Sent: 21 September 2023 11:33

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

Subject: access to documents request - Non-Paper on disinfo/foreign interference

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 - EU common messages on building international norms on countering foreign information manipulation and interference (FIMI) and disinformation. (13216/23)

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, 12 October 2023

DELETED

Email: **DELETED**

Ref. 23/2612-vl/el

Request made on: 21.09.2023

Dear **DELETED**,

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

I regret to inform you that access to document **ST 13216/23** cannot be given for the reasons set out below.

The requested document is a Note from the Council's Horizontal Working Party on Enhancing Resilience and Countering Hybrid Threats to the Political and Security Committee, containing a non-paper on "EU common messages on building international norms on countering foreign information manipulation and interference (FIMI) and disinformation".

Following our internal consultations, regrettably document **ST 13216/23** cannot be disclosed. This document contains information elaborated for internal coordination within the EU and its Member States with a view to strengthening cooperation when preparing within a multilayer approach to communicate on EU's action against FIMI and disinformation disseminated by state and non-state actors to perpetrate political and security threats.

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).

Releasing of this document to the public would reveal the EU's and its MS' strategies in preventing and countering hybrid threats and weaken their coordinated efforts to organise joint action in this field, also in close cooperation with their international partners, causing prejudice to public interest as regards public security and international relations.

Consequently, regretfully access to the requested document must be refused.²

We have also looked into the possibility of releasing parts of the document.³ 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

² Article 4(1)(a), first and third indent of Regulation (EC) No 1049/2001.

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

[E-mail message sent to access@consilium.europa.eu on Friday, 13 October 2023, 13:28]

From: **DELETED**

Sent: 13 October 2023 13:28

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

Subject: Internal review of access to documents request - Non-Paper on disinfo/foreign interference

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-Paper on disinfo/foreign interference'.

I find the refusal I received to be insufficiently justified based on the exceptions cited.

As regards the refusal to release documents under Article 4(1)a, you state that the identification of particular equipment would allow exploitation of possible vulnerabilities in Council systems and put security devices at risk. However, I would like to remind the Commission that the General Court ruled in the *Evropaïki Dynamiki* case (T-167/10) in regard to a matter of public security that the Commission had to show how disclosure „could specifically and actually undermine that objective in a way that is reasonably foreseeable and not purely hypothetical“. In the *Steinberg* case (T-17/10), the General Court established that there was a concrete risk of disclosure as the documents might be used to exert pressure on the relevant persons, even to make threats to their physical or moral integrity. I would like to contend that in the present case, the Commission must examine whether this high standard of the exception is met, namely that disclosure would result into an actual threat. Considerations you give in your reply do not, according to my understanding of the case law, suffice to deny access.

Likewise, 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.)

Yours faithfully,

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