



Council of the
European Union

164144/EU XXVII. GP
Eingelangt am 28/11/23

Brussels, 28 November 2023
(OR. en)

16102/23

INF 266
API 181

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 37/c/01/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 17 November 2023 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 21 November 2023 (Annex 2);
- the confirmatory application dated 24 November 2023 and registered on 27 November 2023 (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Friday 17 November 2023, 14:03
using the electronic form available in the Register application.]

Form of address

DELETED

Family name

DELETED

First name

DELETED

E-mail

DELETED

Occupation

DELETED

Name of the organisation

Full postal address

DELETED

Telephone

Requested document(s)

All documents in the Council's possession that contain information about the hearings of Hungary in accordance with Article 7 (1) TEU - hearings held on 16 September 2019, 10 December 2019, 22 June 2021, 23 May 2022, 18 November 2022 and 30 May 2023 -, as well as all documents that contain information about the discussion on the state of play regarding respect for EU values in Hungary held on 15 November 2023 in the General Affairs Council.

In particular:

- all documents (minutes, transcriptions, recordings) on the basis of which the General Secretariat of the Council compiled its published reports on the above-mentioned hearings
- all written submissions in connection with the Article 7 (1) procedure against Hungary (by Hungary, other Member States, the Commission or other entities)
- all documents that contain information about the discussion of the Article 7 (1) procedure against Hungary in the preparatory bodies of the Council.



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, 21 November 2023

DELETED

Email: **DELETED**

Ref. 23/3352-rh/vk

Request made on: 17.11.2023

Dear **DELETED**,

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

Having carefully checked documents in our possession containing information related to the respective hearings of Hungary, Article 7(1) of the Treaty on the European Union, and having consulted with the responsible political Directorate General within the General Secretariat, we can confirm that all documents that you have requested are public and available for downloading in the [public register](#) of Council documents.

The Council's public register contains references to most Council documents since 1999 (exceptions may apply regarding classified documents), of which approximately 75% are public and available for downloading.

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).

By choosing the option "Search in the register", you can search for documents using several criteria, for example: document number, words in subject or text, subject matter, date and interinstitutional file number.

If you find a document in the register that cannot be directly downloaded you may introduce a request for access by using the available electronic form.

As regards the [General Affairs Council of 15 November 2023](#), please note that we haven't issued any additional document, since the state of play was based on an oral update given by the European Commission. Public sessions and the press conference can be followed on the page [Council live](#) on our website.

Yours sincerely,

Fernando FLORINDO

[E-mail message sent to access@consilium.europa.eu on Friday, 24 November 2023, 17:10]

From: **DELETED**

Sent: vendredi 24 novembre 2023 17:10

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

Subject: Re: Ref. 23/3352-rh/vk

Confirmatory Application

Dear Mr Florindo, Dear Information Services Unit / Transparency,

With reference to your letter (23/3352-rh/vk) concerning my request for access to documents, I would like to file this confirmatory application in accordance with Article 7 (2) of Regulation 1049/2001 and ask the Council to reconsider its position contained in said letter.

Firstly, I would like to remind you that pursuant to Article 7 (1) of Regulation 1049/2001 the institution "shall inform the applicant of his or her right to make a confirmatory application". Your letter contains no such information, nor does it explain the way a confirmatory application should be made. Thereby, I kindly ask you to state, in an acknowledgement of receipt of the present letter, that you indeed treat this letter as a confirmatory application and will process it in accordance with Article 8 of Regulation 1049/2001.

Secondly, in your letter you state that all the requested documents are public and available for downloading in the public register of Council documents. According to Article 10 (2) of Regulation 1049/2001 "if a document has already been released by the institution concerned and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document." In my view, this provision should oblige the Council to provide a link for each of the documents in the register that fall within the scope of my request, and it has failed to do so. Nevertheless, with the keywords "Hungary Article 7" I managed to find some public documents about the hearings, namely documents determining the scope of each hearing and documents of the formal reports compiled by the General Secretariat of the Council. The reference numbers of the documents is as follows: 11385/2019, 12345/2019, 14402/2019, 5775/2020, 9295/2021, 10247/2021, 8473/2022, 9574/2022, 14124/2022, 15199/2022, 8913/2023, 10101/2023. In your answer to this confirmatory application, please provide links to any remaining document that falls within the scope of my initial application and is available through the register.

Thirdly, in my initial application I've requested access to all documents (for example minutes, transcriptions, recordings) on the basis of which the General Secretariat of the Council compiled its published reports on the Article 7 (1) hearings concerning Hungary. It transpires from the published reports that there must exist more detailed documents about the content of the hearings in the form of minutes, transcriptions, recordings, written submissions or maybe handwritten notes, as it is not reasonable to suppose that the officials who compiled the reports relied solely on their memory of the discussions (that took approximately 2-2,5 hours each time). Thereby, I would like to ask you to try to identify other documents on the basis of which the General Secretariat compiled its reports on the hearings and decide about their disclosure according to Regulation 1049/2001. Should you maintain that such documents do not exist, please explain, in your answer to this confirmatory application, how it is possible that the Council draws up summary reports about long and complicated discussion without the help of any pre-existing documentation and explain the process by which these reports were drawn up.

Fourthly, I would like to ask you to try to identify documents that contain information about the "state of play" discussion during the General Affairs Council on 15 November 2023. In this respect, it is reasonable to suggest that there must have been some written correspondence between the Council and the Commission that paved the way for the discussion, and it is also likely that delegations have received at least some information about the oral update of the Commission, as it would be quite uncommon for ministers to engage in discussion without any prior knowledge about the envisaged topics. In the alternative, please explain, in your answer to this confirmatory application, what kind of preparation predated the "state of play" discussion and how is it possible that there is no documentation whatsoever thereof.

24.11.2023.

Yours sincerely,

DELETED