



Council of the
European Union

168401/EU XXVII. GP
Eingelangt am 09/01/24

Brussels, 9 January 2024
(OR. en)

5188/24

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API 3

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 01/c/01/24

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 8 November 2023 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 20 December 2023 (Annex 2);
- the confirmatory application dated 8 January 2024 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Wednesday 8 November 2023, 11:57]

From: **DELETED**

Sent: 08 November 2023 11:57

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

Subject: access to documents request - WHO Framework Convention on Tobacco Control (FCTC)
– Tenth session of the Conference of parties (COP10)

Dear Madam, Sir,

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:

ST 12851 2023 INIT
ST 12851 2023 ADD 1
ST 13430 2023 INIT
ST 13430 2023 REV 1
ST 14595 2023 INIT
ST 14437 2023 ADD 1
ST 14807 2023 INIT
ST 14761 2023 ADD 1
ST 14807 2023 COR 1
ST 14761 2023 ADD 1 REV 1

If you require additional clarification regarding my request, do not hesitate to contact me.

Please note I prefer to receive the documents and any communication in digital format, and not by physical mail. Let's protect the environment.

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, 20 December 2023

DELETED

Email: **DELETED**

Ref. 23/3242-adb/ns

Request made on: 08.11.2023

Deadline extension: 29.11.2023

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union¹.

Please find attached documents **ST 14807/23 INIT + COR1** that you requested.

I regret to inform you that access to documents **ST 12851/23 INIT + ADD1, ST 13430/23 INIT + REV1, ST 14595/23 INIT, ST 14437/23 ADD1 and ST 14761/23 ADD1 REV1** cannot be given for the reasons set out below.

Documents ST 12851/23 and its ADD1 contain the Commission's proposal for a Council Decision on the positions to be taken on behalf of the European Union at the tenth session of the Conference of the Parties to the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC). *Documents ST 13430/23 INIT + REV1* contain Presidency compromise proposal Option B on the Proposal for a Council Decision on the positions to be taken on behalf of the EU at the tenth session of the Conference of the Parties to the WHO FCTC. *Document*

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).

ST 14595/23 INIT contains a note from the General Secretariat of the Council regarding the approval of the positions and common positions for the Tenth session of the Conference of the Parties (COP10) of the WHO FCTC. Document ST 14437/23 ADD1 contains a note from the General Secretariat of the Council regarding the adoption of the Addendum to the Council Decision on the positions to be taken on behalf of the European Union at the tenth session of the Conference of the Parties to the WHO FCTC. Document ST 14761/23 ADD1 REV1 contains a joint statement by the Bulgarian, Czech, Cypriot, Greek, Italian, Romanian, and Slovak Delegations on the adoption of the Council Decision on the positions to be taken on behalf of the EU at the tenth session of the Conference of the Parties to the WHO FCTC.

Disclosure of the information contained in these requested documents would have a negative effect on the negotiating position of the European Union at the tenth session of the Conference of the Parties to the FCTC ('COP10'), originally scheduled from 20 to 25 November 2023 and now postponed to early February 2024 (5 to 10 February).

Accessing the information contained in these documents would provide undue insights into the process and deliberations between the Commission and Council. It would hence allow to draw conclusions about the priorities and strategy of the European Union for the COP10 already ahead of it, thus importantly weakening the negotiating position of the EU in these international negotiations, and possibly leading to undue pressure on the EU institutions. Furthermore, as these documents contain the draft Union positions for the COP10 as proposed by the Commission and subsequently modified in the Council preparatory bodies, their disclosure could disturb the dialogue between the Commission and the Member States in the Council, as well as the ability of the EU to negotiate at COP10 and promote EU tobacco control policies and regulatory approaches at the international level.

Disclosure of the requested documents would consequently undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to these documents at this stage².

Please note that the document distributed under number **ST 14761/23 ADD1** has been declared null and void.

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

² Article 4(1)(a), 3rd indent, of Regulation (EC) No 1049/2001.

[E-mail message sent to access@consilium.europa.eu on Monday, 8 January 2024, 13:44]

From: **DELETED**

Sent: 08 January 2024 13:44

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

Subject: Internal review of access to documents request - WHO Framework Convention on Tobacco Control (FCTC) – Tenth session of the Conference of parties (COP10)

Dear Madam, Sir,

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

I am filing a confirmatory application with regards to my access to documents request registered on 8 November 2023 under Ref. 23/3242-adb/ns.

The Council has decided to deny access to most documents, because they pertain to positions and common positions to be taken on behalf of the EU at the FCTC COP10. It claims disclosure "would have a negative effect on the negotiating position of the European Union".

However, it is in the interest of the EU citizens to know which positions the public body representing them will take. Moreover, the Council has in the past been able to publish negotiating positions - for example ahead of the 28th Conference of the Parties (COP28) of the United Nations Framework Convention on Climate Change (UNFCCC) - ahead of the meeting. If that is possible, then so should a disclosure of the positions taken at the FCTC COPs.

Sincerely

DELETED
