



Council of the  
European Union

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Eingelangt am 08/04/20

Brussels, 8 April 2020  
(OR. en)

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API 44

#### NOTE

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From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 10/c/01/20

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 27 February 2020 and registered on the same day (Annex 1);
- reply from the General Secretariat of the Council dated 19 March 2020 (Annex 2);
- confirmatory application dated 8 April 2020 and registered on the same day (Annex 3).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 27 February 2020 - 12:15 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of: **DELETED**

Address: **DELETED**

Telephone: **DELETED**

Mobile:

Fax:

Requested document(s): Any notification or information received by the Council from an EU Member State pursuant to:

- Article 4, 5, 6, 8, 12, 15, or 16 of Regulation 208/2014, as amended
- Article 4, 5, 6, 8, 12, 15, or 16 of Regulation 269/2014, as amended
- Article 2e, 7, 8, or 9 of Regulation 692/2014, as amended
- Article 3, 4, 6, 8, or 9 of Regulation 833/2014, as amended

NB most of the notification/information obligations require MSs to address the Commission. I have requested the Commission for information, but they replied they did not receive anything, and suggested the MSs may have addressed 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, 19 March 2020

Mr **DELETED**  
Email: **DELETED**

Ref. 20/0571-VI/jl

Request made on: 27.02.2020

Dear Mr **DELETED**,

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

Following our consultations with the directorate of the General Secretariat of the Council responsible for this policy and with the European Commission and the European External Action Service, our Transparency service has identified the following five documents containing notifications/information from EU Member States:

- Concerning Regulation No 208/2014: COREU CFSP 0035/18
- Concerning Regulation No 269/2014: COREU CFSP 0009/14, 0026/18 and 0027/18
- No document with regard to Regulation No 692/14
- Concerning Regulation No 833/2014: COREU 0020/19.

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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).

These documents contain sensitive data on the implementation of core measures foreseen in the abovementioned Regulations. The General Secretariat is of the opinion that their disclosure to the wide public would undermine public interest with regard to public security and international relations.

Consequently, I regret to inform you that access to these COREU documents cannot be granted.<sup>2</sup>

We have also looked into the possibility of releasing parts of these documents.<sup>3</sup> However, as the exceptions to the right of access apply to their entire content, 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.<sup>4</sup>

Yours sincerely,

Fernando FLORINDO

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

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

<sup>4</sup> Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EU) No 2018/1725, if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

[letter attached to e-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 8 April 2020 - 11:38]

Dear Sir/Madam,

On the 27th of February, 2020, I requested access to any notification or information received by the Council from an EU Member State pursuant to:

- Article 4, 5, 6, 8, 12, 15, or 16 of Regulation 208/2014, as amended
- Article 4, 5, 6, 8, 12, 15, or 16 of Regulation 269/2014, as amended
- Article 2e, 7, 8, or 9 of Regulation 692/2014, as amended
- Article 3, 4, 6, 8, or 9 of Regulation 833/2014, as amended

While these Regulations oblige the Member States to submit notifications and to send information to the Commission, they apparently have not done so, since another request for information with the Commission yielded no results. Therefore, the Commission suggested I should address the Council.

You responded to my request on March 19th, 2020, stating that you had identified the following five documents falling within the remit of my request:

- Concerning Regulation No 208/2014: COREU CFSP 0035/18
- Concerning Regulation No 269/2014: COREU CFSP 0009/14, 0026/18 and 0027/18
- No document with regard to Regulation No 692/14
- Concerning Regulation No 833/2014: COREU 0020/19

In your response, you stated that these documents contain sensitive data on the implementation of core measures foreseen in the abovementioned Regulations, and that the General Secretariat is of the opinion that their disclosure to the wide public would undermine public interest with regard to public security and international relations. For these reasons, you could not grant me access to these documents. Moreover, while you considered granting me partial access, you stated that you are unable to do that, as the exceptions to the right of access apply to the documents in their entirety.

With this confirmatory application, I request you to review your decision.

Article 2 of Regulation 1049/2001 (OJ 2001, L 145/43) gives any citizen of the European Union the right of access to documents of the institutions. The Regulation applies to all documents held by an institution, including documents received by it and in its possession. Moreover, the Regulation applies to all areas of activity of the European Union. Therefore, also the documents that I requested, which are documents received by the Council, on a subject matter which is an area of activity of the European Union, fall within its scope. In view of your response, you seem to agree on that.

Since the documents I requested fall within the scope of the Regulation, the applicable rules should ‘ensure the widest possible access to documents’ (Regulation 1049/2001, Article 1(a)). The recitals underline this: ‘In principle, all documents of the institutions should be accessible to the public’ (Regulation 1049/2001, recital 11). However, the Regulation enables the institutions to deny access to documents on the grounds of certain specifically enumerated exceptions.

In your decision, you refuse to grant access to the requested documents referring to two specific exceptions listed in Article 4(1)(a) of Regulation 1049/2001. These are public security and international relations, listed in the first and third indent of Article 4(1)(a) of Regulation 1049/2001.

However, your decision does not contain any explanation as to why granting access to the requested documents would jeopardise the public interests you refer to. This is contrary to the obligations on the institutions to provide reasons for their decisions. More specifically, the Court of Justice has held in a consistent line of case law that if an institution wishes to rely on the exceptions listed in Article 4(1)(a) of Regulation 1049/2001, and refuses access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and effectively undermine the interest protected by the exception upon which it is relying. Moreover, the risk of that undermining must be reasonably foreseeable and not purely hypothetical (Sweden v MyTravel and Commission, Case C 506/08 P, paragraph 76; Council v Access Info Europe, Case C 280/11 P, paragraph 31; Council v In ’t Veld, case C 350/12 P, paragraph 52).

Further, the Court of Justice has held that ‘if the institution applies one of the exceptions provided for in Article 4 of Regulation 1049/2001, it is for that institution to weigh the particular interest to be protected through non-disclosure of the document concerned against, inter alia, the public interest in the document being made accessible, having regard to the advantages of increased openness, as described in recital 2 to Regulation No 1049/2001, in that it enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system’ (Council v Access Info Europe, Case C 280/11 P, paragraph 32; see also Sweden and Turco v Council, Joined Cases C 39/05 P and C 52/05 P, paragraph 45).

Regrettably, your decision does not contain any statement of how you weighed the particular interests of public security and international relations to the public interest in the document being made accessible. Not only would accessibility increase the openness of the activities of the European Union in general, regarding this specific request there are also some more specific interests that I would like to bring forward. I made the request for access to the documents as indicated in the framework of a project of academic research, conducted within the University of Groningen in a collaboration between the department of Criminal Law and Criminology and the department of International Relations and International Organization. I am one of the project leaders. This research project has as its aim to increase scientific knowledge and understanding of the design, adoption and implementation of restrictive measures, specifically those adopted after the Russian invasion of eastern Ukraine and Crimea. This includes comparative legal research into various national laws, but also into the nature of the multilevel governance structures that include national competent authorities, national and European legislators, and European institutions in an executive capacity. As a part of this, we intend to gain more insight into the ways the European and Member State authorities collaborate in their duties surrounding implementation of EU Regulations within this context, which includes sending notifications of adopted legislation and performing oversight over the implementation efforts of Member States’ authorities. The outcomes of this research project could be attained better by having access to the documents you indicated. In addition, since we intend to publish our findings, having access to the documents would increase public awareness of the relevant field, since the information contained therein would feed into the project outcomes and enhance the research findings, leading to a more complete public understanding of multilevel rulemaking relating to the topic of sanctions and restrictive measures.

For these reasons, I respectfully request that you review your decision and that you would grant me full, or at least partial, access to the documents that you indicated to be in your possession. At least, it would be very much appreciated if you would specify the reasons why you need to rely on the exceptions relating to public security and international relations.

Yours sincerely,

**DELETED**

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