



Council of the  
European Union

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Brussels, 14 March 2024  
(OR. en)

7757/24

API 45  
INF 66

#### NOTE

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 09/c/01/24

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Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 27 January 2024 and registered on 29 January 2024 (Annex 1);
- the reply from the General Secretariat of the Council dated 1 March 2024 (Annex 2);
- the confirmatory application dated 7 March 2024 and registered on the same day (Annex 3).

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[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on Saturday 27 January 2024, 08:41]

**From:** **DELETED**

**Date:** Saturday, January 27, 2024 8:41 AM

**To:** TRANSPARENCY Access to documents (COMM) [Access@consilium.europa.eu](mailto:Access@consilium.europa.eu)

**Subject:** Application according to EU regulations 1049/2001 and 1367/2006

To whom it may concern at the Council of the European Union,

I am writing to you in order to submit a formal request for access to documents of the Council of the European Union in accordance with Regulations (EC) No 1049/2001 and (EC) No 1367/2006. I am interested in specific documents that are of crucial importance for my professional activities.

Please find in attachment to this email my detailed request specifying the documents concerned. I would ask for my request to be dealt with as soon as possible and would be grateful for confirmation of receipt and updates on the further course of proceedings.

Thank you in advance for your support and consideration.

[Complimentary close]



Dear Sir/Madam,

On the basis of Regulations (EC) No 1049/2001 and (EC) No 1367/2006, I would be grateful if you could send me documents containing the following information:

- 1. Draft and final decisions and measures adopted by the Council of the European Union against the state of Kosovo:** This concerns all measures in the context of the events and decisions referred to in the European Council's press releases 403/23 of 3 June 2023 and 518/23 of 30 June 2023.
- 2. Detailed statements of reasons for the decisions of the Council of the European Union:** A detailed description of and justification for the decisions and measures against the state of Kosovo set out in the abovementioned press releases and reasons for the continuation of the measures.
- 3. Minutes and communications of the decision-making process of the Council of the European Union:** Access to minutes of meetings, reports and all communications that provide information about the decision-making process of the Council of the European Union with regard to the abovementioned demands and the measures imposed.
- 4. Information on international consultations and cooperation:** Documents relating to consultations and cooperation between the Council of the European Union and international organisations and third countries on the abovementioned measures.

The extensively interpreted doctrine of the right of access to documents of the institutions of the European Union, as enshrined in Article 15(1) of the Treaty on the Functioning of the European Union (TFEU) and Article 42 of the Charter of Fundamental Rights of the European Union (CFR), underlines the essential importance of the transparency and openness of the EU institutions. This principle is also confirmed by Article 1(2) of the Treaty on European Union (TEU) and Article 298 of the Treaty on the Functioning of the European Union (TFEU).

In view of the abovementioned principle of transparency, there is an overriding public interest in the disclosure of the requested information. This seems particularly urgent given the indications of possible non-compliance of the European Union's actions with EU, international and human rights law. A thorough analysis and review of the demands and orders set out in the European Council's press releases 403/23 of 3 June 2023 and 518/23 of 30 June 2023 is therefore essential.

The press release's call for new elections in the four northern municipalities of Kosovo raises serious concerns about democratic legitimacy and trust in the electoral process. The call for new elections is particularly worrying in view of the fact that the incumbent mayors were elected in regular and legally compliant elections. Such a decision risks seriously damaging fundamental democratic principles and trust in the rule of law.

I would therefore like to ask for comprehensive information and well-founded justifications to support the necessity and legality of the requested new elections. In accordance with the principle of *lex specialis*, it is essential to verify the conformity of these demands with internationally recognised democratic standards, including the European Convention on Human Rights.

These demands and actions by the European Union must be considered in the light of Article 21 TEU. That article requires the European Union to be guided by the principles which not only inspired its own creation and development, but which it also seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principle of equality, solidarity, and respect for the principles of the United Nations Charter and international law. Article 22(1) TEU also specifies that the European Council is to identify its strategic interests and objectives on the basis of these fundamental principles and objectives.

It is therefore essential that EU actions and decisions, in particular with regard to the situation in Kosovo, comply with these fundamental principles. These articles underline the importance of transparency and accessibility of the documents of the EU institutions, as these are indispensable elements of democratic scrutiny and public responsibility.

At the meeting of the EU's Committee on Foreign Affairs on 27 June 2023, the High Representative of the Union for Foreign Affairs and Security Policy, Josep Borrell, discussed the electoral processes in Kosovo. Although he confirmed the legality of these elections, his interpretation of their legitimacy, based on the *auctoritas non veritas facit legem* (authority, not truth, makes law) principle, appears problematic from a legal perspective. According to the legal principle of *argumentum e contrario*, the fundamental right to participate in free and fair elections, as enshrined in EU law, international law and international human rights law, at the same time implies the right to abstain from voting. This *argumentum e contrario* clarifies that low turnout does not automatically undermine the legitimacy of the elections, as non-voting is also an integral part of any democratic electoral system. At that meeting, this fundamental aspect of electoral rights was also confirmed by Mr Miroslav Lajčák, who emphasised the compliance of the Kosovo elections with legal standards.

Consequently, according to the *legitimitas ad causam* rule, low voter turnout cannot be relied upon as a basis for questioning the legitimacy of the electoral process.

Moreover, Miroslav Lajčák's suggestion at the abovementioned meeting that Kosovo's constitution should be amended so as to enable the Kosovo government to interfere in the elections also appears problematic. Such a suggestion constitutes a clear *ultra vires* act, as it violates Principle IV of the Helsinki Final Act, which prohibits interference in the internal affairs of sovereign states. – a fundamental element of Article 21 TEU.

These considerations are of the utmost importance as they directly affect the core principles of democracy and international law – principles to which the European Union explicitly subscribes. Consequently, according to the *pacta sunt servanda* principle, it is imperative that the EU fully comply with these fundamental principles in its foreign policy, in particular in relation to Kosovo.

In the light of the above it is essential that the European Union carefully reflect upon its actions and decisions relating to Kosovo and ensure that they are in line with the fundamental principles of democracy, the rule of law and respect for the sovereignty of states. The disclosure of the requested documents and information is, in this context, not just a legal right; it is also imperative for transparency and the preservation of the fundamental values on which the European Union is founded.

As a legal entity based on the principles of democracy and the rule of law it is vital for the EU to implement those principles consistently in its foreign policy. This requires respect for state sovereignty and the democratic decisions of citizens.

Interference by the EU or its Member States in the internal affairs of a country, in particular in democratic processes, constitutes a violation of the principles of the EU Treaty, of international law and of international human rights standards. Such interference would seriously jeopardise the legitimacy and integrity of the EU as a promoter of democratic values and the rule of law. It could have grave consequences for future conflicts both within and outside the EU. The 'Kosovo case' could set a precedent for the infringement of a fundamental human right – the right to free and democratic elections. This is the cornerstone of every democracy, as set out in the Charter of Paris and pursuant to Article 21(2)(c) TEU, according to which 'Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law.

Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.’ The Charter goes on to affirm that: ‘everyone also has the right ... to participate in free and fair elections’.

The absurdity of this situation is particularly evident when it comes to the Copenhagen criteria, which are a prerequisite for membership of the European Union. Of those criteria, the ‘political criterion’ in particular explicitly requires respect for democracy and human rights. If Kosovo were to follow the EU’s instructions, which are in direct contradiction to those criteria, it could be used by any EU Member State as a basis for blocking Kosovo’s admission to the EU. That would undermine not only the credibility of EU enlargement policy but also the principles on which the Union is founded.

Taking these aspects into consideration, the role of the EU in international affairs must be evaluated in the light of its own commitments and respect for the sovereign rights of other states. This case is of particular public interest because, pursuant to Article 21 TEU, by *argumentum e contrario*, the demand made of Kosovo also concerns all EU members and accordingly the human rights of all EU citizens. What applies to local elections in Kosovo could in theory also apply to any elections in the EU. This therefore directly affects the human rights of every citizen in the EU and could undoubtedly set a precedent. In theory, there is a risk that every election could be regarded as illegitimate, which could enable legal interference in the democratic values of a country. The ‘Kosovo case’ could therefore be relied upon as a reference for every election in the EU, with potentially serious consequences for the internal security of the EU and its Member States.

In my request for access to information I explicitly refer to the case-law of the Court of Justice. As has already been established by the Court of Justice, information should be disclosed when there is an ‘overriding public interest in disclosure’.

There is no doubt that the requested documents, which concern decisions of the EU institutions in the Kosovo case in relation to press release 403/23 of 3 June 2023 and press release 518/23 of 30 June 2023, are of overriding public interest. The citizens of the European Union have a legal right to transparency in EU foreign policy, in particular in such sensitive matters. This is vital to enable democratic scrutiny and public debate, which are essential for initiating petitions, citizens’ initiatives or complaints to the European Ombudsman.

The public interest in disclosure of this information should, accordingly, be valued more highly than the European Council's or another EU institution's interest in confidentiality. The judgment of the Court of Justice cited above supports the submission that my request for access cannot be refused with a general reference to confidentiality. On the contrary, my request for transparency and clarification must be complied with.

In the light of the arguments set out above, these are the relevant provisions of international and EU law which have been infringed in the Kosovo case:

1. **Charter of Fundamental Rights of the European Union:** Articles 39 and 40 concerning the right to vote and access to public office.
2. **Treaty on European Union (TEU):** Articles 2, 3 and 14(3) as *lex fundamentalis* enshrining democratic principles and citizens' rights; Article 21, which defines the EU foreign policy principles.
3. **Treaty on the Functioning of the European Union (TFEU):** Articles 20(2)(b) and 22, which define citizens' rights within the EU.
4. **Vienna Convention on the Law of Treaties:** Article 26, which emphasises the binding nature of treaties.
5. **Charter of the United Nations:** Article 2(4), which emphasises the territorial integrity and political independence of States and prohibits interference in the internal affairs of the participating States. Article 55, which refers to the promotion of human rights and fundamental freedoms.
6. **European Convention on Human Rights (ECHR):** Article 3 of Protocol No 1, which guarantees the right to free elections.
7. **International Covenant on Civil and Political Rights (ICCPR):** Articles 1 and 25(b), which govern the right of peoples to self-determination and participation in public elections.

**8. Universal Declaration of Human Rights (UDHR):** Article 21(3), which emphasises the right to participate in government through free elections.

**9. Charter of Paris:** This underlines the importance of democracy and free elections and reaffirms the right of every citizen to participate in free and fair elections.

**10. Principles of the Helsinki Final Act:** In particular, Principle IV, which emphasises the territorial integrity of States and stipulates non-interference in the internal affairs of the participating States.

This list makes it clear that the EU's actions and demands in the Kosovo case touch on a number of fundamental international agreements and EU laws that address key principles of democracy, the rule of law and human rights. They affect the EU either directly or indirectly through Article 21 TEU.

Finally, I would like to express my hope that this request for access to information can constitute the beginning of a constructive dialogue. It is in the common interest to resolve the current situation in line with European values and standards in order to provide an optimal solution for all those concerned. The disclosure of the requested documents is an important step towards creating transparency and mutual trust as the basis for such an agreement. I therefore urge you to appreciate the urgency of my request and look forward with confidence to future cooperation in the spirit of our common European ideals.

EU action in this context affects every EU citizen, including myself. And it is not impossible that such decisions could also influence other elections within the EU in the future. For the EU to declare a legal, democratic election to be illegitimate on the basis of low turnout is unprecedented. The impact of such an approach would be far-reaching and could undermine the foundations of all our democratic societies.

To conclude, in my capacity as a medical practitioner trained at the University of Tübingen and licensed to practise in both Germany and Switzerland, I would like to draw your attention to my deep professional and ethical obligation arising from my medical oath. That oath commits me not only to safeguarding the health and well-being of my patients, but also to promoting and protecting human rights in general.

The Declaration of Geneva of the World Medical Association, by which I am bound as a doctor, underlines the need to respect human rights and to uphold them in my professional practice. In that context, I see it as my duty to draw attention to possible violations of human rights, in particular when I become aware of them through my professional activity or research.

I am therefore submitting this request for access to information not only in the interests of transparency and accountability, but also as an expression of my ethical responsibility as a doctor. Access to the information requested is essential in order to enable me to assess possible maladministration and to respond in accordance with my professional and ethical obligation. This is in line with international human rights standards and with my medical oath, which encourages me to actively promote and protect human rights.

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*'AS A MEMBER OF THE MEDICAL PROFESSION, I SOLEMNLY PLEDGE TO DEDICATE MY LIFE TO THE SERVICE OF HUMANITY'*



*Declaration of Geneva of the World Medical Association*

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Please note that you have 15 days from receipt of this letter to forward the documents requested. I would prefer an English-language version of those documents. If they are not available in English, I would kindly request a German-language version. If they are unavailable in either English or German, please send a French-language version. If the documents are unavailable in any of those languages, please send them in another available language.

I would stress that I would like to receive a reply by email to this address and not via a web portal. Please confirm receipt of this message. Thank you for your efforts in that regard.

[Complimentary close]

**DELETED**

[E-mail message sent to **DELETED** on Friday 01 March 2024 15:45]

From: TRANSPARENCY Access to documents (COMM)  
Sent: 01 March 2024 15:45  
To: **DELETED**  
Subject: Ref: 24/0289-vl/nb

Dear Mr ...,

Please find attached a letter from the General Secretariat of the Council concerning your request for access to documents.

In that connection, we would point out that Regulation (EC) No 1049/2001 refers only to access to existing documents of the EU institutions. The Aarhus Regulation (Regulation (EC) No 1367/2006) is in any event inapplicable, as the present case does not concern environmental information.

Nor may any obligation on the EU institutions to give further justification for political decisions to an individual citizen in response to an intervention by that individual be inferred from the Treaty provisions to which you refer.

The General Secretariat of the Council is therefore unable to enter into any further correspondence regarding this part of your submission.

Yours sincerely,



**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, 1 March 2024

**DELETED**

Email: **DELETED**

Ref.: 24/0289-vl/nb

Request made on: 27.01.2024

Registered on: 29.01.2024

Time limit extended to: 19.02.2024

Dear **DELETED**,

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

The General Secretariat of the Council has identified the following documents:

**Point 1 of your request:**

The only decision taken in the context of the content of the press releases to which you refer concerns EULEX KOSOVO and is contained in document ST 8603/23. The relevant proposal is set out in document ST 8602/23.

You will find both documents attached.

**Point 2 of your request:**

With regard to the decision on EULEX KOSOVO, please see the above reply to point 1. For the rest, there are no Council documents containing 'statements of reasons' in the area referred to here.

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<sup>1</sup> The General Secretariat of the Council has examined your request on the basis of 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).

### **Point 3 of your request:**

Please find attached documents ST 15074/23, ST 15089/23, ST 15094/23 + ADD 1, ST 15096/23, ST 16588/23, ST 16707/23 + ADD 1 + ADD 2, ST 16935/23 ADD 1 and ST 5433/24. Some of those Council documents contain reports, proposals and communications from individual Member States or the Commission.

You will also find attached a partially accessible version of document ST 14585/23 ADD 1.<sup>2</sup> Document ST 14585/23 ADD 1 contains the minutes of the meeting of the Foreign Affairs Council on 23 October 2023. You are being granted access to that part of the document that is covered by your request.

Finally, I regret to inform you that access to documents WK 16171/23, ST 8747/23, ST 8747/1/23 REV 1, ST 8748/23 and ST 8749/23 cannot be given for the reasons set out below.

Document WK 16171/23 was produced by the European External Action Service (EEAS) for the Council's Working Party on the Western Balkans Region and contains the Mandate Implementation Report of the EU Special Representative in Kosovo for the period from 16 May to 15 November 2023.

Based on our consultations with the relevant services of the General Secretariat and the EEAS, and taking into account the sensitive information on the political situation in Kosovo contained in that report, the General Secretariat concludes that disclosure of the document would – highly likely, and not just hypothetically – have a negative impact on the EU's relations with relevant third parties. Moreover, the document contains information pertaining to activities of the Kosovo authorities and ongoing investigations, the disclosure of which would undermine the public interest in terms of public security.

Consequently, access cannot be given to document WK 16171/23.<sup>3</sup>

Documents ST 8747/23, ST 8747/1/23 REV 1, ST 8748/23 and ST 8749/23 contain draft conclusions for the meeting of the European Council on 29 and 30 June 2023.

On the basis of our internal consultations, the General Secretariat concludes that those draft texts cannot be disclosed as they contain preliminary options on sensitive issues which were later discarded. Their disclosure could give an inaccurate impression and might seriously affect future negotiations in the Council, which would weaken the ability of the Council (and subsequently of the European Council) to act on the international stage, as well as the effectiveness of its political action. Disclosure would therefore undermine the public interest as regards international relations.<sup>4</sup>

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<sup>2</sup> Article 4(6) of Regulation (EC) No 1049/2001.

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

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

We have also looked into the possibility of releasing parts of those documents<sup>5</sup>. However, as the information contained therein forms an inseparable whole in each case, the General Secretariat is unable to give partial access either.

#### **Point 4 of your request:**

Document ST 8603/23 – already mentioned in point 1 above – is relevant in this regard, as are some of the documents referred to in point 3. No other documents are available.

#### **Other**

In addition, the following information is available from various sources on the internet and may be of interest to you:

##### COUNCIL WEBSITE

- Videoclip featuring stockshots illustrating EU-Kosovo relations: \*<https://newsroom.consilium.europa.eu/events/20231214-european-council-december-2023-day-1/142856-eu-kosovo-relations-20231208>
- Belgrade-Pristina Dialogue: Statement by the High Representative on behalf of the European Union on expectations from Serbia and Kosovo\* (press release): <https://www.consilium.europa.eu/en/press/press-releases/2023/09/19/belgrade-pristina-dialogue-statement-by-the-high-representative-on-behalf-of-the-european-union-on-expectations-from-serbia-and-kosovo/>
- EU-Western Balkans ministerial meeting with the six Foreign Ministers of the Western Balkans partners: <https://newsroom.consilium.europa.eu/events/20231113-eu-western-balkans-ministerial-meeting-november-2023>
- EU-Western Balkans Ministerial Meeting, 13 November 2023 – Press release: <https://www.consilium.europa.eu/en/press/press-releases/2023/11/13/eu-western-balkans-ministerial-meeting/>
- EU HR Borrell chairs the Belgrade-Pristina dialogue – September 2023: <https://newsroom.consilium.europa.eu/events/20230914-eu-hr-borrell-chairs-the-belgrade-pristina-dialogue-september-2023>

##### WEBSITES OF OTHER EU INSTITUTIONS AND BODIES AND INTERNATIONAL PARTNER ORGANISATIONS

- Website of the EU Representation in Kosovo – EU Special Representative in Kosovo: [https://www.eeas.europa.eu/delegations/kosovo\\_en?s=321](https://www.eeas.europa.eu/delegations/kosovo_en?s=321)
- EEAS website on the Belgrade-Pristina Dialogue: [https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue\\_en](https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue_en)
- EP: ‘Motion for a resolution on the recent developments in the Serbia-Kosovo dialogue, including the situation in the northern municipalities in Kosovo’ – 16 and 18 October 2023: [https://www.europarl.europa.eu/doceo/document/B-9-2023-0437\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-9-2023-0437_EN.html)
- 2023 Kosovo enlargement package\* – Commission fact sheet: [https://neighbourhood-enlargement.ec.europa.eu/document/download/1fec0e03-a7b6-4225-b357-d3549fbc63ac\\_en?filename=EU-KS%20FS.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/1fec0e03-a7b6-4225-b357-d3549fbc63ac_en?filename=EU-KS%20FS.pdf)
- Council of Europe – Report of 27 November 2023 to the Parliamentary Assembly on Kosovo’s application for membership (including reference to incidents involving journalists): <https://rm.coe.int/application-for-membership-set-out-in-the-letter-of-12-may-2022-addres/1680ad7750>
- Relevant information from the web portal of the Directorate of Programme Co-ordination of the Council of Europe: <https://www.coe.int/en/web/programmes/kosovo>
- Overview of the activities of the Council of Europe in Kosovo (2023): [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680ac895b](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680ac895b)

<sup>5</sup> Article 4(6) of Regulation (EC) No 1049/2001.

\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

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.

Yours sincerely,

Fernando FLORINDO

Encl.: 14

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on Thursday 7 March 2024, 14:20]

**From:** **DELETED**

**Date:** Thursday, March 7, 2024, 2:20 PM

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

**Subject:** Re: Ref.: 24/0289-vl/nb

Confirmatory application pursuant to  
Article 7(2) of Regulation (EC)  
No 1049/2001



To whom it may concern at the **Council of the European Union**, dear Mr Florindo,

I refer to your letter of 1 March 2024 (ref.: 24/0289-vl/nb).

**I hereby submit a confirmatory application pursuant to Article 7(2) of Regulation (EC) No 1049/2001 in respect of my initial application with registration number 24/0289.**

The extensively interpreted doctrine of the right of access to documents of the institutions of the European Union, as enshrined in Article 15(1) of the Treaty on the Functioning of the European Union (TFEU) and Article 42 of the Charter of Fundamental Rights of the European Union (CFR), underlines the essential importance of the transparency and openness of the EU institutions. This principle is also confirmed by Article 1(2) of the Treaty on European Union (TEU) and Article 298 of the Treaty on the Functioning of the European Union (TFEU).

In view of the abovementioned principle of transparency, there is an overriding public interest in the disclosure of the requested documents.

This seems particularly urgent given the indications of possible non-compliance of the European Union's actions with EU, international and human rights law. A thorough analysis and review of the demands and orders set out in the European Council's press releases 403/23 of 3 June 2023 and 518/23 of 30 June 2023 is therefore essential.

The press release's call for new elections in the four northern municipalities of Kosovo raises serious concerns about democratic legitimacy and trust in the electoral process. The call for new elections is particularly worrying in view of the fact that the incumbent mayors were elected in regular and legally compliant elections. Such a decision risks seriously damaging fundamental democratic principles and trust in the rule of law.

In accordance with the principle of *lex specialis*, it is essential to verify the conformity of these demands with internationally recognised democratic standards, including the European Convention on Human Rights.

These demands and actions by the European Union must be considered in the light of Article 21 TEU. That article requires the European Union to be guided by the principles which not only inspired its own creation and development, but which it also seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principle of equality, solidarity, and respect for the principles of the United Nations Charter and international law.

It is therefore essential that EU actions and decisions, in particular with regard to the situation in Kosovo, comply with these fundamental principles. These articles underline the importance of transparency and accessibility of the documents of the EU institutions, as these are indispensable elements of democratic scrutiny and public responsibility.

At the meeting of the EU's Committee on Foreign Affairs on 27 June 2023, the High Representative of the Union for Foreign Affairs and Security Policy, Josep Borrell, discussed the electoral processes in Kosovo. Although he confirmed the legality of these elections, his interpretation of their legitimacy, based on the *auctoritas non veritas facit legem* (authority, not truth, makes law) principle, appears problematic from a legal perspective. According to the legal principle of *argumentum e contrario*, the fundamental right to participate in free and fair elections, as enshrined in EU law, international law and international human rights law, at the same time implies the right to abstain from voting. This *argumentum e contrario* clarifies that low turnout does not automatically undermine the legitimacy of the elections, as non-voting is also an integral part of any democratic electoral system. At that meeting, this fundamental aspect of electoral rights was also confirmed by Mr Miroslav Lajčák, who emphasised the compliance of the Kosovo elections with legal standards.

Consequently, according to the *legitimitas ad causam* rule, low voter turnout cannot be relied upon as a basis for questioning the legitimacy of the electoral process. Moreover, Miroslav Lajčák's suggestion at the abovementioned meeting that Kosovo's constitution should be amended so as to enable the Kosovo government to interfere in the elections also appears problematic. Such a suggestion constitutes a clear *ultra vires* act, as it violates Principle IV of the Helsinki Final Act, which prohibits interference in the internal affairs of sovereign states – a fundamental element of Article 21 TEU. These considerations are of the utmost importance as they directly affect the core principles of democracy and international law – principles to which the European Union explicitly subscribes. Consequently, according to the *pacta sunt servanda* principle, it is imperative that the EU fully comply with these fundamental principles in its foreign policy, in particular in relation to Kosovo.

In the light of the above it is essential that the European Union carefully reflect upon its actions and decisions relating to Kosovo and ensure that they are in line with the fundamental principles of democracy, the rule of law and respect for the sovereignty of states. The disclosure of the requested documents and information is, in this context, not just a legal right; it is also imperative for transparency and the preservation of the fundamental values on which the European Union is founded.

As a legal entity based on the principles of democracy and the rule of law it is vital for the EU to implement those principles consistently in its foreign policy. This requires respect for state sovereignty and the democratic decisions of citizens.

Interference by the EU or its Member States in the internal affairs of a country, in particular in democratic processes, constitutes a violation of the principles of the EU Treaty, of international law and of international human rights standards.

Such interference would seriously jeopardise the legitimacy and integrity of the EU as a promoter of democratic values and the rule of law. It could have grave consequences for future conflicts both within and outside the EU. The ‘Kosovo case’ could set a precedent for the infringement of a fundamental human right – the right to free and democratic elections. This is the cornerstone of every democracy, as set out in the Charter of Paris and pursuant to Article 21(2)(c) TEU, according to which ‘Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.’ The Charter goes on to affirm that: ‘everyone also has the right ... to participate in free and fair elections’.

The absurdity of this situation is particularly evident when it comes to the Copenhagen criteria, which are a prerequisite for membership of the European Union. Of those criteria, the ‘political criterion’ in particular explicitly requires respect for democracy and human rights. If Kosovo were to follow the EU’s instructions, which are in direct contradiction to those criteria, it could be used by any EU Member State as a basis for blocking Kosovo’s admission to the EU. That would undermine not only the credibility of EU enlargement policy but also the principles on which the Union is founded.

Taking these aspects into consideration, the role of the EU in international affairs must be evaluated in the light of its own commitments and respect for the sovereign rights of other states. This case is of particular public interest because, pursuant to Article 21 TEU, by *argumentum e contrario*, the demand made of Kosovo also concerns all EU members and accordingly the human rights of all EU citizens. What applies to local elections in Kosovo could in theory also apply to any elections in the EU. This therefore directly affects the human rights of every citizen in the EU and could undoubtedly set a precedent. In theory, there is a risk that every election could be regarded as illegitimate, which could enable legal interference in the democratic values of a country. The ‘Kosovo case’ could therefore be relied upon as a reference for every election in the EU, with potentially serious consequences for the internal security of the EU and its Member States. In my request for access to information I explicitly refer to the case-law of the Court of Justice. As has already been established by the Court of Justice, information should be disclosed when there is an ‘overriding public interest in disclosure’.

There is no doubt that the requested documents, which concern decisions of the EU institutions in the Kosovo case in relation to press release 403/23 of 3 June 2023 and press release 518/23 of 30 June 2023, are of overriding public interest. The citizens of the European Union have a legal right to transparency in EU foreign policy, in particular in such sensitive matters. This is vital to enable democratic scrutiny and public debate, which are essential for initiating petitions, citizens’ initiatives or complaints to the European Ombudsman.

The public interest in disclosure of this information should, accordingly, be valued more highly than the European Council or another EU institution's interest in confidentiality. The judgment of the Court of Justice cited above supports the submission that my request for access cannot be refused with a general reference to confidentiality. On the contrary, my request for transparency and clarification must be complied with.

In the light of the arguments set out above, these are the relevant provisions of international and EU law which have been infringed in the Kosovo case:

1. **Charter of Fundamental Rights of the European Union (CFR):** Articles 39 and 40 concerning the right to vote and access to public office.
2. **Treaty on European Union (TEU):** Articles 2, 3 and 14(3) as *lex fundamentalis* enshrining democratic principles and citizens' rights; Article 21, which defines the EU foreign policy principles.
3. **Treaty on the Functioning of the European Union (TFEU):** Articles 20(2)(b) and 22, which define citizens' rights within the EU.
4. **Vienna Convention on the Law of Treaties (VCLT):** Article 26, which emphasises the binding nature of treaties.
5. **Charter of the United Nations:** Article 2(4), which emphasises the territorial integrity and political independence of States and prohibits interference in the internal affairs of the participating States. Article 55, which refers to the promotion of human rights and fundamental freedoms.
6. **European Convention on Human Rights (ECHR):** Article 3 of Protocol No 1, which guarantees the right to free elections.
7. **International Covenant on Civil and Political Rights (ICCPR):** Articles 1 and 25(b), which govern the right of peoples to self-determination and participation in public elections.
8. **Universal Declaration of Human Rights (UDHR):** Article 21(3), which emphasises the right to participate in government through free elections.
9. **Charter of Paris:** this underlines the importance of democracy and free elections and reaffirms the right of every citizen to participate in free and fair elections.
10. **European Charter of Local Self-Government:** Article 3(2).
11. **Principles of the Helsinki Final Act:** in particular, Principle IV, which emphasises the territorial integrity of States and stipulates non-interference in the internal affairs of the participating States.
12. **Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo\*, of the other part:** Article 3 and the following, as agreed by the Parties:

- I. CONSIDERING the commitment of the Parties to institutions based on the rule of law, to good governance and democratic principles through a multi-party system with free and fair elections;
- II. CONSIDERING the commitment of the Parties to respect the principles of the Charter of the United Nations, of the Organisation for Security and Cooperation in Europe (OSCE), notably those of the Final Act of the Conference on Security and Cooperation in Europe of 1975 (hereinafter referred to as ‘the Helsinki Final Act’) and the Charter of Paris for a New Europe of 1990;

This list makes it clear that the EU’s actions and demands in the Kosovo case touch on a number of fundamental international agreements and EU laws that address key principles of democracy, the rule of law and human rights.

They affect the EU either directly or indirectly through Article 21 TEU.

As a doctor, I am obliged by the Declaration of Geneva to uphold the respect for human rights. In this case, the EU has acted without regard for international law, EU law and human rights, with serious implications. There is an urgent need to investigate and discuss these actions in order to avoid further damage and preserve the credibility of the EU as a community of values.

EU action in this context affects every EU citizen, including myself. And it is not impossible that such decisions could also influence other elections within the EU in the future. For the EU to declare a legal, democratic election to be illegitimate on the basis of low turnout is unprecedented. The impact of such an approach would be far-reaching and could undermine the foundations of all our democratic societies.

I would also note that document 11161/23 was not attached. Nor is there any justification for the absence of that document. I would therefore kindly ask you to submit the document in question without delay.

With regard to document WK 16171/23, you refuse disclosure on the basis of the first and third indents of Article 4(1)(a) of Regulation (EC) No 1049/2001.

However, that document was produced by the European External Action Service (EEAS) for the Council’s Working Party on the Western Balkans Region and contains the Mandate Implementation Report of the EU Special Representative in Kosovo for the period from 16 May to 15 November 2023.

Since WK 16171/23 was drawn up by the EEAS – an EU institution other than the Council of the European Union – and received by the Council, not only Article 4(1) of Regulation (EC) No 1049/2001, but also Article 4(3) of Regulation (EC) No 1049/2001 – as the *lex specialis* – apply in this case.

In your examination, you completely ignored Article 4(3) of Regulation (EC) No 1049/2001 and failed to assess its requirements. This constitutes a significant procedural error which renders your decision open to challenge. However, in the case of documents received by an EU institution, Article 4(3) of Regulation (EC) No 1049/2001 must be taken into account when assessing legality. Your examination is therefore incomplete and inaccurate. WK 16171/23 undoubtedly constitutes a document within the meaning of Article 4(3) of Regulation (EC) No 1049/2001 and must be considered in accordance with both that provision and the principle of *lex specialis*.

The derogation provided for in Article 4(3) of Regulation (EC) No 1049/2001 applies to documents received by an institution. Those documents must be disclosed if there is an overriding public interest in disclosure. Access may be refused only if there is no overriding public interest in the disclosure of the document in question.

In the present case, there is no doubt that there is an overriding public interest in the disclosure of WK 16171/23. In accordance with the wording of Article 4(3) of Regulation (EC) No 1049/2001, this outweighs the public interest as regards the undermining of international relations. According to the wording and principle of the *lex specialis*, there is no need for any further balancing of interests, and the document must be made public in full.

I wish to put forward the following additional arguments in support of the overriding public interest in disclosure:

- **The importance for the public debate on EU policy in respect of Kosovo:**  
EU citizens have the right to be informed about the actions of the EU institutions in this politically sensitive matter, and to form their own opinions. This is essential for a functioning democracy.
- **The need for democratic scrutiny of the actions of the EU institutions:**  
Transparency is the only means of ensuring effective scrutiny of the EU institutions by citizens, the media and civil society. This is particularly true in the sensitive area of foreign policy.
- **Upholding the rule of law and human rights:**  
The EU's action in respect of Kosovo raises serious questions as to its compatibility with fundamental principles of EU law, international law and human rights.  
A critical review is therefore necessary in the public interest.
- **Safeguarding the security of EU and Kosovo citizens and public debate on the situation in Kosovo and Serbia constitute an overriding public interest:** If, due to consideration of international relations, the Council were to withhold information contained in the two requested documents that necessitates timely intervention by the EU to protect both its own citizens and the citizens of Kosovo, then that would constitute a serious dereliction of duty. Pursuant to Article 3(2) TEU, it is a declared aim of the Union to offer its citizens an area of freedom, security and justice without internal frontiers. That aim also extends to the EU's external action, as clarified by Article 21(2)(a) TEU. The Union must therefore safeguard and promote its values and interests in its action on the international scene, which explicitly includes the security of its citizens. In addition, the EU-Kosovo Stabilisation and Association Agreement establishes specific EU obligations to ensure the security of Kosovo's citizens. In accordance with Article 92 of that Agreement, the Parties undertake to cooperate in preventing and suppressing acts of terrorism, particularly those with a cross-border/boundary dimension. Those provisions are aimed directly at protecting the citizens of Kosovo, and establish for the EU a specific responsibility for security in Kosovo, going beyond the general obligations as laid down in Article 222 TFEU. Against that backdrop, the EU is obliged to provide Kosovo with security-related information to enable those treaty obligations to be fulfilled. This is especially true since Article 83 of the Agreement provides for the consolidation of the rule of law and the reinforcement of institutions as other areas of cooperation that relate

to security. In the overall context of those provisions, close cooperation and coordination – with the involvement of the relevant EU institutions, especially in situations where there is a cross-border threat – are essential in order to meet the security obligations under the Agreement. This constitutes an obligation towards Kosovo. **That being the case, such information represents an overriding public interest in disclosure in order to allow an informed public debate to take place both in the EU and in Kosovo on the threat of terrorism, which affects not only Kosovo but also – potentially – the EU itself.**

- Should the Council have any information indicating a concrete threat to EU citizens or citizens of Kosovo, the aforementioned provisions would require it to forward that information without delay and to take all necessary measures to protect the persons concerned. Withholding such security-related information based on foreign policy considerations would be incompatible with the treaty obligations of the EU and its institutions. From that perspective too, therefore, the Council must disclose requested document WK 16171/23 in order to allow an informed public debate to take place on the security situation in Kosovo and Serbia, as well as to be able to introduce immediate safeguarding measures. Keeping that information secret, on the other hand, could have serious consequences for the life and limb of EU citizens and citizens of Kosovo. That responsibility must be assumed by the Council of the European Union if it is to fulfil its role as a guarantor of security and fundamental rights both within and outside the EU.

The Court of Justice of the European Union (CJEU) has held in several cases that there is an overriding public interest in the disclosure of documents under Regulation (EC) No 1049/2001, and that access must therefore be granted to the documents requested, even if the EU institutions had initially refused to release those documents (see CJEU judgment of 17 October 2013, Case C-280/11 P – *Council v Access Info Europe*).

That judgment can be applied to the present case. As in the case referred to above, what is at stake here is information of great importance for public debate and democratic scrutiny. The Council's refusal to release the requested document is therefore unjustified and contrary to the principles developed by the CJEU in its case-law.

With regard to your concern that the Kosovo authorities are still investigating in one area. On that point, Article 4(2) of Regulation (EC) No 1049/2001 must be examined, together with the exception of the overriding public interest in disclosure, which also applies.

If you continue to refuse me access to the two requested documents in this confirmatory application, then you will have personally lost my trust, especially since, as lawyers, you are much more knowledgeable about the law than I am.

The EU and its institutions must set a democratic example to EU citizens, and I therefore urge you to live up to your responsibility for transparency and the rule of law and to satisfy citizens' legitimate right to information. It is precisely in times of crisis that the Council of the EU must be guided by the values that the European Union stands for.

To conclude, in my capacity as a medical practitioner who studied at the University of Tübingen and is licensed to practise in both Germany and Switzerland, I would like to draw your attention to my deep professional and ethical obligation arising from my medical oath. That oath commits me not only to safeguarding the health and well-being of my patients, but also to promoting and protecting human rights in general.

The Declaration of Geneva of the World Medical Association, by which I am bound as a doctor, underlines the need to respect human rights and to uphold them in my professional practice. In that context, I see it as my duty to draw attention to possible violations of human rights, in particular when I become aware of them through my professional activity or research. I am therefore submitting this request for access to information not only in the interests of transparency and accountability, but also as an expression of my ethical responsibility as a doctor.

Access to the information requested is essential in order to enable me to assess possible maladministration and to respond in accordance with my professional and ethical obligation. This is in line with international human rights standards and with my medical oath, which encourages me to actively promote and protect human rights.

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*'AS A MEMBER OF THE MEDICAL PROFESSION, I SOLEMNLY PLEDGE TO DEDICATE  
MY LIFE TO THE SERVICE OF HUMANITY'*



*Declaration of Geneva of the World Medical Association*

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Please note that you have 15 working days from the date of registration of this confirmatory application to forward the documents requested. I would prefer an English-language version of those documents. If they are not available in English, I would kindly request a German-language version. If they are unavailable in either English or German, please send a French-language version. If the documents are unavailable in any of those languages, please send them in another available language.

I would stress that I would like to receive a reply by email to this address and not via a web portal. I should be grateful if you would confirm receipt of this message, and I hope that this confirmatory application will be the start of a constructive dialogue.

[Complimentary close]

**DELETED**