



Council of the  
European Union

179051/EU XXVII. GP  
Eingelangt am 02/04/24

Brussels, 2 April 2024  
(OR. en)

8394/24

API 58  
INF 87

## NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 13/c/01/24

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 29 February 2024 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 21 March 2024 (Annex 2);
- the confirmatory application dated 22 March 2024 and registered on the same day (Annex 3).

**From:** document-request@consilium.europa.eu <document-request@consilium.europa.eu>  
**Sent:** Thursday 29 February 2024 10:00  
**To:** TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>  
**Subject:** Consilium - Electronic Request for Access to documents [ENGLISH]

This e-mail has been sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) using the electronic form available in the Register application.

This electronic form has been submitted in ENGLISH.

**Form of address**

**DELETED**

**Family name**

**DELETED**

**First name**

**DELETED**

**E-mail**

**DELETED**

**Occupation**

Media

I submit this request on my own behalf.

**Name of the organisation**

**Full postal address**

**DELETED**

**Telephone**

**DELETED**

**Requested document(s)**

I would like a record of the discussion that took place at Coreper I on 28 February that led the Presidency to conclude there was no qualified majority for the Corporate Sustainability Due Diligence Directive (CSDDD). I would like:

1. Access to the documents on which the discussion was based, namely ST 5893 2024 INIT - NOTE; ST 5893 2024 ADD 1 - NOTE; ST 5893 2024 REV 1 - NOTE; ST 5893 2024 REV 2 - NOTE
2. To know the vote the representative each Member State gave or indicated it would give
3. The reasons given by member state representatives for that decision, if any
4. Any further details that led the Presidency to conclude there was no qualified majority in favour of the Trilogue deal agreed in December 2023 and the subsequently drafted legal text.

This information formed a substantive step in the ordinary legislative procedure of the EU. The result was declared publicly and led to an immediate response from the European Parliament and other stakeholders. If the interventions of the member state representatives were sufficiently clear as to make clear their voting intentions, then this constituted a vote under the normal meaning of the word. If the member state representatives were not sufficiently clear, then the finding that there was no qualified majority constitutes maladministration by the Council of the EU and/or its Presidency.

**1st option**

EN

**2nd option**

FR

This is an automatic reply from the General Secretariat of the Council of the European Union concerning your request for access to Council documents.

This notification was sent from an unattended mailbox. Please do not reply.



**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 March 2024

**DELETED**

Email: **DELETED**

Ref. 24/0734-em/el

Request made on: 29.02.2024

Dear **DELETED**

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

Please find attached documents **ST 5893/24**, **ST 5893/24 ADD 1**, **ST 5893/24 REV 1**, **ST 5893/24 REV 2**, as requested.

You also requested:

- *“a record of the discussion that took place at Coreper I on 28 February that led the Presidency to conclude there was no qualified majority for the Corporate Sustainability Due Diligence Directive (CSDDD)”*;
- *“any further details that led the Presidency to conclude there was no qualified majority in favour of the Trilogue deal agreed in December 2023 and the subsequently drafted legal text”*.

I would like to inform you that the only official record of the discussions in Coreper is the so called “Summary record”. The summary record from the Coreper meeting on 28 February 2024 has not been issued yet.

<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).

However, we identified a note to Coreper dated 13 March 2024 prepared for its meeting on 15 March 2024, which contains information on the discussion in the Coreper meeting on 28 February 2024 on the legislative file in question. You may have access to it and its corrigendum (documents **7327/24 REV1** + **7327/24 REV1 COR1** enclosed).

You also requested information on “*the vote the representative each Member State gave or indicated it would give*” and “*the reasons given by member state representatives for that decision, if any*”.

Please note that Coreper cannot vote on the adoption of the legal act CSDDD, as it does not take substantial decisions. It only takes procedural decisions. Council alone has the power to take substantial decisions. Indeed, under article 19(1) of the [Council's Rules of Procedure](#), Coreper is responsible for *preparing* the work of all Council meetings by examining in advance all items on the agenda for a Council meeting. Coreper endeavours to reach agreement at its level and may come back to the file at an ulterior meeting before submitting the draft act to the Council for adoption.

Yours sincerely,

Fernando FLORINDO

Enclosures: 6

**From:** **DELETED**

**Sent:** Friday 22 March 2024 16:14

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

**Subject:** Re: Ref. 24/0734-em/el

Thank you for your response.

You have, in substance, declined my request to provide “a record of the discussion that took place at Coreper I on 28 February that led the Presidency to conclude there was no qualified majority for the Corporate Sustainability Due Diligence Directive (CSDDD)” and “any further details that led the Presidency to conclude there was no qualified majority in favour of the Trilogue deal agreed in December 2023 and the subsequently drafted legal text”.

I am writing to make a confirmatory application requesting that you reconsider your position, under Article 7(2) of regulation 1049/2001. I would make the following points:

- Your response does not state whether you hold a document corresponding to the information requested. You state that Summary Record constitutes the only "official record" of proceedings at Coreper, though this is not a term that is used in regulation 1049/2001, which refers to access to "documents". I would note that the formal summary record of Coreper of 28 February has now been published, as document 7156/24, dated 20 March 2024, but does not meet the scope of my initial request, and merely states that Coreper "did not endorse the final compromise text" of the relevant directive.
- If your position is that the Council does not hold any document meeting my request then I would like you to state so clearly. It seems to me that, at the 28 February Coreper, a number of member states spoke to indicate whether or not they supported the current draft of the Directive. In the ordinary meaning of the word, this constitutes a vote. If your position is that the Council keeps no such records of discussions and votes taken by formal decision-making bodies, but merely allows their memory to vanish into the ether, then I believe this constitutes maladministration.
- If your position is that the Council does hold a document within the scope of my request, but that you nonetheless decline to release it, I would like to know which of the exemptions under Regulation 1049/2001 you are citing.

- You make a distinction between procedural and substantial decisions. Coreper is a legal body established by the EU Treaties and is vested with certain formal decision-making powers. In this case, the decision on the table constituted a key, substantive and necessary step within the ordinary legislative procedure. Had Coreper endorsed the legislative text placed before it, it would then have written to the European Parliament, annexing a detailed legislative text of the Directive, and indicating that, should the Parliament vote on the identical text, the Council would then be in a position to agree it, such that it passes into law. Without receiving such a letter from Coreper, it seems clear that the Parliament would not have proceeded to vote on the legislation at all, and it would not have passed into law. This was hence a substantive step in the lawmaking and drafting process, to which there should be a presumption of public right of access.

Kind regards,

**DELETED**

---