



Council of the
European Union

179278/EU XXVII. GP
Eingelangt am 04/04/24

Brussels, 4 April 2024
(OR. en)

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API 65

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 15/c/01/24

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 22 February 2024 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 13 March 2024 (Annex 2);
- the confirmatory application dated 3 April 2024 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Thursday 22 February 2024, 12:53]

From: **DELETED**

Sent: Thursday, February 22, 2024 12:53 PM

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

Subject: access to documents request - Opinion of the legal service on the Trade and Cooperation Agreement

Dear Council of the European Union,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, we are requesting full access to the Council document No 5591/21, dated January 25, 2021, titled "Opinion of the legal service on the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, on the one part, and the United Kingdom of Great Britain and Northern Ireland, on the other part".

We acknowledge that this document has been partially disclosed and is available at the following link: <https://data.consilium.europa.eu/doc/document/ST-5591-2021-INIT/en/pdf>.

Postal address: **DELETED**

Please send all correspondence electronically.

Yours faithfully,

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, 13 March 2024

DELETED

Email: **DELETED**

Ref. 24/0640-mj/nb

Request made on: 22.02.2024

Dear **DELETED**,

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

Document **5591/21**, dated 25 January 2021, is an opinion of the Council's Legal Service on the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part. The opinion provides legal advice on the legal nature of the agreement, related in particular with the question of exercise by the EU of its so-called potential competence and the consequential EU-only nature of the agreement.

In view of its subject-matter, disclosure of the advice and the issues that it deals with would undermine the protection of the public interest as regards international relations under Article 4(1)(a) (third indent) of Regulation (EC) No 1049/2001. This is so not only as regards the relations with the UK, which the requested opinion directly pertains to, but also with other third countries in view of the broad nature of the questions discussed in the requested opinion.

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).

It should be added that the legal advice covered by this opinion deals with issues which are particularly prone to litigation. What is more, the requested opinion touches upon horizontal issues (conclusion of EU-only agreements by the exercise by the EU of its potential EU competence, effects for the Member States of the exercise by the EU of its potential competence, etc.) that have broad implications going beyond the file in question. The legal advice is therefore sensitive and particularly wide in scope.

Full disclosure of such a document would therefore undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences.

As regards the existence of an overriding public interest in disclosure in relation to the protection of legal advice under Article 4(2) of Regulation (EC) No 1049/2001, the GSC considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interest so as to justify disclosure of the document. The GSC also underlines in that regard that in this case the legal advice does not pertain to legislative matters.

In view of the foregoing, the GSC is unable to grant you further access to document 5591/21 beyond the parts of the document already publicly available.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).

Yours sincerely,

Fernando FLORINDO

Enclosure

[E-mail message sent to access@consilium.europa.eu on Wednesday, 3 April 2024, 15:40]

From: **DELETED**

Sent: Wednesday, April 3, 2024 3:40 PM

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

Subject: Internal review of access to documents request - Opinion of the legal service on the Trade and Cooperation Agreement

Dear Madam/Sir,

Thank you for your response.

We acknowledge that the Council of the European Union denied full access to document No. 5591/21, dated January 25, 2021, titled "Opinion of the legal service on the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, on the one part, and the United Kingdom of Great Britain and Northern Ireland, on the other part".

The Council justified this refusal on grounds that disclosure of this document would undermine the protection of the public interest as regards international relations under Article 4(1)(a) (third indent) of Regulation (EC) No 1049/2001, and the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001.

With this message, we are submitting a confirmatory application to kindly request the Council of the European Union to reconsider its position concerning our initial application and grant full access to the aforementioned document.

Yours faithfully,

DELETED
