



Council of the
European Union

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Eingelangt am 26/06/24

Brussels, 26 June 2024
(OR. en)

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API 91

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 20/c/01/24

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 3 June 2024 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 13 June 2024 (Annex 2);
- the confirmatory application dated 23 June 2024 and registered on 24 June 2024 (Annex 3).

From: document-request@consilium.europa.eu <document-request@consilium.europa.eu>
Sent: Monday, June 3, 2024 2:06 PM
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 using the electronic form available in the Register application.
This electronic form has been submitted in ENGLISH.

Form of address

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Requested document(s)

17101/23 (22 December 2023), 15230/23 (9 November 2023)

1st option

EN

2nd option

CS



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 June 2024

DELETED

Email: **DELETED**

Ref. 24/1698

Request made on: 03.06.2024

Dear **DELETED**,

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

I regret to inform you that access to documents 15230/23 and 17101/23 cannot be given for the reasons set out below.

Document 15230/23 of 9 November 2023 is a note from the Commission services on a Proposal for a Regulation of the European Parliament and of the Council on the law applicable to the third-party effects of assignments of claims.

This document contains a note recapping the positions of each of the co-legislators on certain matters in the context of trilogue discussions as well as the proposals made by one co-legislator to the other in that same context.

Document 17101/23 of 22 December 2023 is a non-paper from the Commission services on the same proposal.

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).

This document contains a non-paper addressed to the co-legislators to assist the ongoing trilogue discussions. The non-paper discusses the proposals made by one co-legislator to the other in the context of the ongoing legislative negotiations.

The Commission, consulted as author of these two documents, opposes to their release.

The General Secretariat considers that disclosure of the documents would expose the position of each of the co-legislators and hamper ongoing legislative negotiations.

Disclosure at a moment when the appropriate balance of the various interests involved has not yet been achieved within the Council's preparatory bodies would reduce the flexibility for delegations to formulate and reconsider their positions in the light of the arguments exchanged in the debate. This would seriously affect the chances of finding a convergence in delegation's positions.

Disclosure of the requested documents at this stage would thus seriously undermine the decision-making process of the Council.

Having examined the context in which the documents were drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in their immediate disclosure.

As a consequence, the General Secretariat has to refuse access to these documents at this stage.²

We have also looked into the possibility of releasing parts of the documents.³ However, as the exception to the right of access applies to their entire content, the General Secretariat is currently also unable to give partial access to them.

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

² Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

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

From: document-request@cis.consilium.europa.eu <document-request@cis.consilium.europa.eu>
Sent: Sunday, June 23, 2024 11:37 PM
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Subject: Consilium - Electronic Request for Access to documents [ENGLISH]

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Requested document(s)

I am submitting this confirmatory application pursuant to Article 7(2) of Regulation (EC) No 1049/2001. The reference number of the initial application for the disclosure of Document No 15230/23 of 9 November 2023, and Document No17101/23 of 22 December 2023 (“Documents”) is 24/1698.

By a decision dated 13 June 2024 (“Decision”), the General Secretariat of the Council of the European Union (“General Secretariat”) refused access to the Documents. I am requesting a review of this Decision within the time period given therein.

I request that the Decision be reviewed in light of the case T-540/15 De Capitani v.

European Parliament. In a situation analogous to the present, the General Court ruled that access to documents relating to ongoing dialogues must in principle be granted on a specific

request, unless the institution proves that it is reasonably foreseeable and not purely hypothetical that full access to the documents at issue is likely to undermine, specifically and actually, the decision-making process. The General Court called for a strict application of the exceptions provided for in Regulation (EC) No 1049/2001.

However, in the present case, the General Secretariat denied access to the Documents without having proved that it would be reasonably foreseeable that full access to the documents at issue is likely to undermine, specifically and actually, the decision-making process.

The General Secretariat further states in the Decision that “it could not identify any evidence suggesting an overriding public interest in their immediate disclosure”. This argument, however, contradicts the General Court’s ruling in *De Capitani*. The institution is not supposed to search for evidence to justify releasing documents relating to an ongoing trialogue. On the contrary, it shall state specific reasons for the denial of the release of such documents.

Finally, the General Secretariat shall consider that the reason for requesting the Documents is purely academic. My habilitation thesis *inter alia* examines the third-party effects of the assignment of claims with an international element. Therefore, the Documents are of crucial importance to the research.

In conclusion, a hypothetical threat to a legislative process does not constitute an exception under Article 4 of Regulation (EC) No 1049/2001, which would allow the refusal to access the Documents. Since the General Secretariat did not provide any specific and real reasons for the refusal of my initial application, I am therefore asking for a review of the refusal of access to the requested Documents.

1st option

EN

2nd option

CS