



Council of the
European Union

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Eingelangt am 02/09/24

Brussels, 2 September 2024
(OR. en)

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NOTE

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| From: | General Secretariat of the Council |
| To: | Delegations |
| Subject: | Public access to documents - Confirmatory application No 24/c/04/24 |

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 16 July 2024 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 30 August 2024 (Annex 2);
- the confirmatory application dated 31 August 2024 and registered on 2 September 2024 (Annex 3).

From: **DELETED**

Sent: Tuesday 16 July 2024 09:27

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

Subject: access to documents request - Starlink for Ukraine

Dear Council of the European Union,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting any document held by the Council regarding the use of Starlink by the Ukrainian government. This is meant to include working papers, working group meeting minutes, submissions by member states or any other document held by the Council in regard to Starlink. This is meant to cover, in particular, any document mentioning the financing of Starlink terminals for Ukraine by the European Union and/or its member states.

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, 30 August 2024

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E-mail: **DELETED**

Ref. 24/2067

Request made on: 16.07.2024

Deadline extension: 06.08.2024

Dear **DELETED**

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

Our apologies for the delay in answering your query, caused by unforeseen technical constraints in processing the outcome of our consultations.

The General Secretariat identified the following documents containing references to Starlink, corresponding to your request:

- **ST 11707/22 ADD 1**, containing a staff working document from the European Commission focusing on the Digital Economy and Society Index (DESI) 2022 dated 28 July 2022
- **ST 8155/23**, drawn up by the European Union Military Committee on 5th April 2022 and focusing on the EUMC Strand D input to the EDA Capability Development Plan 2023 revision
- **ST 13558/23 ADD 4**, containing a staff working document from the European Commission accompanying its Communication to the European Parliament, the Council, the European

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).

Economic and Social Committee and the Committee of the Regions Report on the state of the Digital Decade 2023, dated 27 September 2023

- **WK 3349/2022**, dated 9 March 2022, containing a presentation of the European Commission focusing on the topic “Secure Connectivity Programme : Impact Assessment”
- **WK 9075/2022**, focusing on “The Open Internet as cornerstone of digitalisation DIGITAL.pdf (europa.eu)”
- **WK 10607/2022**, dated 19 July 2022, drawn up by the European Commission services in liaison with the European External Action Service, Eurojust and Europol and containing information on the Ukraine’s needs for the prosecution of war crimes and corresponding initiatives
- **WK 3170/2023 REV 3, REV 4 and REV 5**, drawn up by the European Union Military Committee respectively on 21 March 2023, 29 March 2023 and 3 April 2024 and focusing on the EUMC Strand D input to the EDA Capability Development Plan 2023 revision
- **WK 8586/2023**, presentation by the European Commission to the Horizontal Working Party on Cyber Issues on 23 June 2023
- **A Powerpoint presentation** from the EU Cybersecurity Agency (ENISA) dated 19 April 2023 on the topics “Nevers report” and the “Leo Satcom Cyber Security”
- **A Powerpoint presentation** from the Swedish Department for Cybersecurity and Secure Communications focusing on “The Cyberwar in Ukraine”
- **A document prepared by the EEAS and Commission** on cyber-related equipment and services, dated 14 March 2022
- **Six documents prepared by the EEAS** on the above topic, dated respectively 25 March 2022, 1 April 2022, 8 April 2022, 29 April 2022, 6 May 2022 and 23 June 2022
- **A document prepared by the FR Presidency** concerning IT equipment, dated 28 March 2022, as well as an updated version of that document, dated 29 March 2022
- **A document prepared by the Commission** on cyber-related equipment and services, dated 14 June 2022.”

Following our consultations, the General Secretariat has reached the following conclusion:

- You may have full access to the following documents: [ST 11707/22 ADD 1](#), [ST 13558/23 ADD 4](#) (these first two documents already in the public domain, fully downloadable from the public register of Council’s documents), **WK 9075/2022** and the abovementioned **presentation from Sweden**.
- I regret to inform you that access to the remaining documents identified by the General Secretariat cannot be released to the public.

These documents contain detailed cyber-related data elaborated to facilitate the examination of IT requirements and services by the competent preparatory bodies of the Council following requests from the Ukrainian authorities.

Moreover, in particular document **WK 10607/2022** focuses on logistical and expertise requirements for war crimes investigations.

Having regard to the sensitive nature of their contents and to the geo-political-military context concerned, and following our consultations, the General Secretariat is of the opinion that public access to these documents cannot be granted, since their release to the wide public would cause prejudice to public interest as regards public security, defence and military matters, and international relations.²

Moreover, as regards document **WK 10607/2022**, its disclosure would undermine the protection of the purpose of inspections, investigations and audits³.

We have also looked into the possibility of releasing parts of these documents⁴. However, as the information contained therein forms an inseparable whole, and since the abovementioned exceptions apply to their entire contents, the General Secretariat is unable to give partial access.

Finally, you may also wish to consult the following background documents/information, all accessible on line:

- [ST 10658/23](#), Council conclusions on 26 June 2023 on EU Digital Diplomacy
- <https://digital-strategy.ec.europa.eu/en/library/report-cybersecurity-and-resiliency-eu-communications-infrastructures-and-networks>
- [Report on the cybersecurity and resiliency of the EU communications infrastructures and networks | Shaping Europe's digital future \(europa.eu\)](#)
- [LEO Satcom-cybersecurity-assessment](#)

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

(Enclosures: 2)

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

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

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

From: **DELETED**

Sent: Saturday 31 August 2024 14:30

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

Subject: Internal review of access to documents request - Starlink for Ukraine

Dear Council of the European Union,

Please pass this on to the person who reviews confirmatory applications.

I am filing the following confirmatory application with regards to my access to documents request 'Starlink for Ukraine'.

I find the reasoning behind withholding the documents in question insufficient. Just because the content of the documents it deems sensitive, this does not create a general presumption of non-disclosure. Reasons for withholding access must be given for each document, and it must be argued specifically why disclosure would undermine the protected interests. That has not been the case in the reply I received.

As regards the documents and parts of documents withheld under the exceptions for international relations, the Court of Justice of the EU has said that the risk of jeopardizing international relations must be reasonably foreseeable and not purely hypothetical (see CJEU, 21 July 2011 Case C-506/08 P, Sweden v MyTravel and Commission) and that the institution must show that the document requested specifically and actually undermines the interest protected by the exception (see CJEU, 28 November 2013, Case C-576/12 P, Ivan Jurasinovic v Council of the European Union, paragraph 45.)

I contend that it is necessary to show that disclosure would undermine the public interest as regards international relations based explicitly on a specific reasoning regarding the content of the document or documents in question. The mere fact that a document concerns an interest protected by an exception is not of itself sufficient to justify application of that exception (Case T-2/03 Verein für Konsumenteninformation v Commission [2005] ECR II-1121, paragraph 69). In principle, such an application can be justified only if the institution has previously determined, first, that access to the document was likely, specifically and actually, to undermine the protected interest.

In *In 't Veld v Council*, the ECJ agreed with the General Court that not all internal debates could reveal strategic objectives or be exploited by negotiating partners, and in *Besselink v Council*, the General Court found that disclosing positions already known by negotiating partners, drafted before any actual negotiation took place, can also not reasonably be said to undermine the EU's international relations.

Likewise, as regards the invoked exception for public security, the General Court ruled in the *Evropaïki Dynamiki* case (T-167/10) in regard to a matter of public security that the Commission had to show how disclosure „could specifically and actually undermine that objective in a way that is reasonably foreseeable and not purely hypothetical“. In the *Steinberg* case (T-17/10), the General Court established that there was a concrete risk of disclosure as the documents might be used to exert pressure on the relevant persons, even to make threats to their physical or moral integrity. I would like to contend that in the present case, the Council must examine whether this high standard of the exception is met, namely that disclosure would result into an actual threat. General considerations you give in your reply do not, according to the case law, suffice to deny access.

Yours faithfully,

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