



Council of the  
European Union

095234/EU XXVII. GP  
Eingelangt am 29/03/22

Brussels, 29 March 2022  
(OR. en)

7578/22

INF 34  
API 23

#### NOTE

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 03/c/01/22

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Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 2 March 2022 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 23 March 2022 (Annex 2);
- the confirmatory application dated 24 March 2022 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 Wednesday 2 March, 2022 14:42 using the electronic form available in the Register application]**

**From:** **DELETED**

**From:** document-request@consilium.europa.eu <document-request@consilium.europa.eu>

**Sent:** Wednesday, March 2, 2022 2:42 PM

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

**Subject:** Consilium - Electronic Request for Access to documents [ENGLISH]

Mr

**Family name**

**DELETED**

**First name**

**DELETED**

**E-mail**

**DELETED**

**Occupation**

Academia

**On behalf of**

**Full postal address**

**DELETED**

**Telephone**

**Mobile telephone**

**DELETED**

**Fax**

**Requested document(s)**

CM 1944 2022 INIT - WRITTEN PROCEDURE



**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, 23 March 2022

**DELETED**

Email: **DELETED**

Ref. 22/0463-vl/ns

Request made on: 02.03.2022

Dear **DELETED**,

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

I regret to inform you that public access to the requested document - **CM 1944/22** - cannot be granted for the reasons here below.

Document **CM 1944/22** focuses on the end of a written procedure that led to the recent adoption of Council Decisions on an assistance measure under the EPF to support the Ukrainian Armed Forces and the approval of a concept note in this regard.

In the light of our internal consultations, I regret to inform you that access to this document cannot be given, since the disclosure of the sensitive information contained therein could cause prejudice to public interest as regards international relations.

Moreover, the release of this document to the public could seriously undermine the decision-making process of the institution even after Council adoption as it could have an impact on future decisions related to this policy matter.

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<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).

Having examined the context in which the document was 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 its disclosure.

Consequently, access to document **CM 1944/22** must be refused.<sup>2</sup>

We have also looked into the possibility of releasing parts of the requested document.<sup>3</sup> However, as the information contained therein forms an inseparable whole, the General Secretariat is unable to give partial access

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

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<sup>2</sup> Article 4(1)(a), third indent and 4(3), second sub-paragraph of Regulation (EC) No **1049/2001**.

<sup>3</sup> Article 4(6) of Regulation (EC) No **1049/2001**.

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on Thursday, March 24, 2022 13:12]

**From:** DELETED

**Sent:** Thursday, March 24, 2022 1:12 PM

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

**Subject:** Re: Ref. 22/0463-vl/ns

Dear Mr Florindo,

Thank you for following up on my request of 2 March 2022 wherein requesting access to CM 1944/22. I take note of your refusal to give access to this document "...since the disclosure of the sensitive information contained therein could cause prejudice to public interest as regards international relations", and that "... the release of this document to the public could seriously undermine the decision- making process of the institution even after Council adoption as it could have an impact on future decisions related to this policy matter". I thank you also for looking into the possibility of releasing parts of the requested document.

I would like to clarify that all I am asking is for the statements used for the application of the constructive abstention from implementing Council Decision (CFSP) 2022/338. These must be contained in document CM 1944/22 and most probably linked with statements delivered upon the adoption of the Council decision adopting the EPD. I believe that this information will not provide any additional 'sensitive' details that would affect the EU's work in international affairs since most of it is already public (see points below). To this end, in line with Article 7(2) of Regulation (EC) No 1049/2001, I am kindly asking the Council to review its decision, due to the following considerations:

Article 31(1) TEU states: 'When abstaining in a vote, any member of the Council may qualify its abstention by **making a formal declaration under the present subparagraph**. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position".

Indeed, document CM 1944/22 focuses on the end of a written procedure that led to the recent adoption of Council Decisions on an assistance measure under the EPF to support the Ukrainian Armed Forces and the approval of a concept note in this regard. Being therefore linked with the dispensation of funds under the European Peace Facility, the Council's decision (COUNCIL DECISION (CFSP) 2021/509) to adopt the EPF is important, as is important document 6618/21 ADD 1 of 18 March 2021 on MS statements upon the Council's Decision to adopt the establishment of the EPF. This document (6618/21 ADD1) was made public on 4 August 2021 following a request for public access dated 13 July 2021. Therefore, the statements of Austria, France, Ireland, Malta, and Sweden upon the adoption of the EPF decision are public. Most importantly Austria, Ireland, Malta and Sweden reserved their right to constructively abstain from certain applications of the EPF.

Council Decision (CFSP) 2022/338 of 28 February 2022 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force was published in the Official Journal L060 of 28 February 2022 ([https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2022.060.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A060%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.060.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A060%3ATOC)). Thus, the MS not participating in this decision are those not listed in Article 4(4)-- Austria, Ireland, and Malta. This was substantiated by the HR/VP Borrell in his remarks ahead of the EU Defence Ministers meeting of 28 February 2022 and made clear also by several online articles such as: (i) <https://epthinktank.eu/2022/03/11/russias-war-on-ukraine-the-eus-financing-of-military-assistance-to-ukraine/> ; (ii) <https://timesofmalta.com/articles/view/eu-to-finance-arms-to-ukraine-escalate-sanctions-malta-to-contribute.937581> ; (iii) <https://www.irishtimes.com/news/ireland/irish-news/ireland-to-fund-provision-of-non-lethal-equipment-to-ukrainian-military-1.4813568?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fireland%2Firish-news%2Fireland-to-fund-provision-of-non-lethal-equipment-to-ukrainian-military-1.4813568> ; (iv) <https://www.thejournal.ie/eu-defence-weapons-ukraine-5695861-Feb2022/> ; (v) <https://www.politico.eu/newsletter/brussels-playbook/today-in-ukraine-eu-meets-the-moment-offering-refuge/> ; (vi) and tweets by Malta's and Ireland's PM and FM.

Therefore, since most of the information is already public, I would be grateful if you could reconsider your decision and reverse your decision not to publish CM 1944/22.

Sincerely,

**DELETED**

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