



Brussels, 7 February 2025
(OR. en)

6071/25

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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents
- Confirmatory application No 02/c/01/25

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 3 December 2024 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 27 January 2025 (Annex 2);
- the confirmatory application dated 6 February 2025 and registered on 7 February 2025 (Annex 3).

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

Sent: Tuesday 3 December 2024 15:31

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

DELETED

Family name

DELETED

First name

DELETED

E-mail

DELETED

Occupation

DELETED

I submit this request on my own behalf.

Name of the organisation

Full postal address

DELETED

Telephone

DELETED

Requested document(s)

1) Europol report on the ETIAS state of preparation - ST 15257 2024 INIT - NOTE

2) Europol Information Management - ST 14310 2024 INIT - NOTE

1st option

EN

2nd option

FR



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, 27 January 2025

DELETED

Email: **DELETED**

Ref. 24/3021

Request made on: 03.12.2024

Deadline extension: 06.01.2025

Dear **DELETED**,

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

Please find attached document **14310/24** you requested.

Having consulted Europol who is the originating source of the other requested document **15257/24**, I have to inform you that Europol does not consent to the release of this file to the public domain.

Document **15257/24** of 8 November 2024 contains Europol's 12th Report to the European Parliament and the Council of the European Union on the implementation of ETIAS.

After an internal consultation, Europol came to the conclusion that the report contains sensitive and detailed information about the state of play of different activities in relation to the implementation of ETIAS at Europol, as well as information on costs and risks, which Europol considers not suitable for public disclosure. Considering that the process of the implementation of ETIAS at Europol is still ongoing, the disclosure of such information to the public would jeopardize Europol's ability to effectively perform its tasks. Thus, Europol decided to refuse public access in full, in line with the

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).

applicable legislation. This decision is grounded on the protection of the public interest as regards public security, such as the proper fulfilment of Europol's tasks.

As a consequence, the General Secretariat is of the opinion that the disclosure of the requested document **15257/24** would undermine the protection of the public interest as regards public security, Article 4(1)(a)(1) of Regulation (EC) 1049/2001.

We have also looked into the possibility of releasing parts of this document.² However, as the information contained in the document 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.³

Yours sincerely,

Fernando FLORINDO

Enclosure

² Article 4(6) of Regulation (EC) No 1049/2001.

³ Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EU) No 2018/1725, if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

From: **DELETED**

Sent: Thursday 6 February 2025 19:49

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

Subject: Re: Ref. 24/3021

Dear Transparency Office,

Thank you for your communication, reference n. 24/3021, sent on January 27, 2025, in relation to a request to access documents held by the European Council, in light of Regulation (EC) 1049/2001.

After considering my request and consulting with Europol, your office decided not to give access to document Document 15257/24 of 8 November 2024, which contains Europol's 12th Report to the European Parliament and the Council of the European Union on the implementation of ETIAS.

I would like to bring to your attention some elements that, in my opinion, substantiate the need to disclose this document, in order for the European Council to fully comply with transparency obligations inscribed in the EU legislation. Therefore, in accordance with Article 7(2) of Regulation EC 1049/2001, I herewith lodge a confirmatory application and request the Council to reconsider its position within 15 working days of receiving this reply.

Grounds of objection

1. General considerations:

According to EU case-law, an institution is required to adopt a broad interpretation of the right of access and a narrow interpretation of the exceptions to that right of access. More specifically:

- in view of the objectives pursued by Regulation No 1049/2001, exceptions must be interpreted and applied strictly (see Case C-6 4/05 P Sweden v Commission and Others [2007] ECR I-0000, paragraph 66);

- the risk of that interest being undermined must, in order to be capable of being relied on, be reasonably foreseeable and not purely hypothetical; it is not sufficient for an institution to state that the documents simply concern a particular interest. Rather, the institution must show that it is reasonably foreseeable that disclosing the document(s) would undermine one or more of these interests (Case T-2/03 Verein für Konsumenteninformation v Commission).

The Council is ultimately responsible for compliance with Regulation 1049/2001 and associated case law. Indeed, there is no evidence in your reply that disclosure of the documents would specifically, effectively and in a non-hypothetical manner seriously undermine the interests represented in Article 4(1)(a)(1) of Regulation (EC) 1049/2001, on the protection of the public interest as regards public security.

2. Objections to the application of the exception concerning the protection of public interest as regards public security outlined in Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

In your reply, you state that “Europol came to the conclusion that the report contains sensitive and detailed information about the state of play of different activities in relation to the implementation of ETIAS at Europol, as well as information on costs and risks, which Europol considers not suitable for public disclosure. Considering that the process of the implementation of ETIAS at Europol is still ongoing, the disclosure of such information to the public would jeopardize Europol’s ability to effectively perform its tasks. Thus, Europol decided to refuse public access in full, in line with the applicable legislation.”

The applicant would like to specify that the fact that the implementation of ETIAS is still ongoing does not constitute a reason for reducing transparency. On the contrary, the democratic process in which European citizens, lawmakers and civil society organizations play an essential role, is based on the possibility to scrutinize ongoing actions by EU institutions and associated agencies. The only elements brought forward not to disclose the document are the fact that it contains information on “costs and risks”. These aspects have, clearly, a strong public interest: it is in the public interest, in fact, to know whether the preparation of a system such as the ETIAS, which has been setup to increase security for the whole EU, has undergone limitations or delays because of budget restrictions or budget needs. It appears as well as extremely relevant to provide information on the risks which might be associated with such a system and database, which will store, circulate and process the personal data of millions of non EU citizens every year.

Furthermore, the European Council’s decision adds that “this decision is grounded on the protection of the public interest as regards public security, such as the proper fulfilment of Europol’s tasks.” I would like the Council to consider if the mandate of an Agency, in this case Europol, can be seen in itself as a limitation to its transparency obligations. In my view, this reasoning would allow EU security agencies to exempt themselves from transparency obligations to which they are subject, therefore contravening EU law.

In light of the serious concerns raised by the EDPS and privacy experts about the potentially wide-ranging fundamental rights implications for millions of people there is an overriding public interest in disclosure of the requested document that is objective and general, and certainly cannot be considered as indistinguishable from merely individual or private interests.

Transparency in this case is thus of paramount importance for ensuring the legitimacy of the democratic decision-making process and of the EU action in general. In other words, transparency is a necessary condition for EU citizens to become duly informed about the relevant decision-making process, including the position of single member states and EU agencies, of the European Commission and Council.

Finally, to reiterate point made above, previous case law has established that “the purpose of the regulation [1049/2001] is to give the public the widest possible right of access” and that “the exceptions to that right set out in Article 4 of the regulation must be interpreted and applied strictly”. The necessity to apply exceptions strictly stems from the fact that, according to the Court, “openness makes it possible for citizens to participate more closely in the decision-making process and for the administration to enjoy greater legitimacy and to be more effective and more accountable to the citizens in a democratic system.” Any derogation from the principle of transparency can only ever be exceptional.

In light of the above, I request the Council to reconsider its position and disclose the document identified within the 15-day period set down in Regulation 1049/2001.

I would also like to remind the Commission of its obligation under EU case law (case T-188/98, paragraph 46) to review each argument put forward by the applicant and address them individually. In accordance with the right to privacy and protection of personal data, I expect my application to be dealt with confidentiality, particularly in any communication with third parties.

I will be glad to provide the competent offices with any further information which is needed to complete this procedure.

Best regards,

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