

Brussels, 8 January 2026
(OR. en)

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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents - Confirmatory application No 02/c/01/26

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 5 November 2025 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 19 December 2025 (Annex 2);
- the confirmatory application dated 7 January 2026 and registered on the same day (Annex 3).

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

Sent: Wednesday, November 5, 2025 4:40 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.

Title

DELETED

First name

DELETED

Family name

DELETED

E-mail

DELETED

Occupation

Academia

I submit this request on my own behalf.

Name of the organisation

Full postal address

Telephone

Requested document(s)

6694/20, 9348/20, 9907/19, 10530, 13105/19, 14273/19, 14822/19, 9670/1/20 REV 1

1st option

EN

2nd option

BG



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, 19 December 2025

DELETED

Email: **DELETED**

Ref. 25/3327

Request made on: 05.11.2025
Deadline extension: 26.11.2025

Dear **DELETED**,

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

You have requested access to the following documents:

6694/20 RESTREINT UE/EU RESTRICTED of 9 March 2020 - EPPO: appointment of the European Prosecutors - Written remarks from Portugal and Belgium on the ranking and reasoned opinion on the candidates nominated by them. Portugal and Belgium, authors of this document, have been consulted in line with Article 4(4) of Regulation **1049/2001**.

9348/20 RESTREINT UE/EU RESTRICTED of 2 July 2020 - EPPO: appointment of European Prosecutors - Written remarks from Bulgaria on the ranking and reasoned opinion on the candidates nominated by it. Bulgaria, author of this document, has been consulted in line with Article 4(4) of Regulation **1049/2001**.

9907/19 RESTREINT UE/EU RESTRICTED of 6 June 2020 - Opinion of the selection panel set up pursuant to Article 14(3) of Council Regulation **2017/1939** on the candidates nominated by Austria.

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).

The Secretariat of EPPO, author of this document, has been consulted in line with Article 4(4) of Regulation 1049/2001.

10530/19 RESTREINT UE/EU RESTRICTED of 21 June 2019 - Opinion of the selection panel set up pursuant to Article 14(3) of Council Regulation 2017/1939 on the candidates nominated by Belgium, Germany, France and the Netherlands. The Secretariat of EPPO, author of this document, has been consulted in line with Article 4(4) of Regulation 1049/2001.

13105/19 RESTREINT UE/EU RESTRICTED of 15 October 2019 - Opinion of the selection panel set up pursuant to Article 14(3) of Council Regulation 2017/1939 on the candidates nominated by Cyprus, Greece, Lithuania and Romania. The Secretariat of EPPO, author of this document, has been consulted in line with Article 4(4) of Regulation 1049/2001.

14273/19 RESTREINT UE/EU RESTRICTED of 19 November 2019 - Opinion of the selection panel set up pursuant to Article 14(3) of Council Regulation 2017/1939 on the candidates nominated by Spain, Croatia, Luxembourg, Portugal and Slovenia. The Secretariat of EPPO, author of this document, has been consulted in line with Article 4(4) of Regulation 1049/2001.

14822/19 RESTREINT UE/EU RESTRICTED of 10 December 2019 - Opinion of the selection panel set up pursuant to Article 14(3) of Council Regulation 2017/1939 on the candidates nominated by Italy, Estonia and Slovakia. The Secretariat of EPPO, author of this document, has been consulted in line with Article 4(4) of Regulation 1049/2001.

9670/1/20 REV 1 RESTREINT UE/EU RESTRICTED of - Opinion of the selection panel set up pursuant to Article 14(3) of Council Regulation 2017/1939 on the candidates nominated by Malta. The Secretariat of EPPO, author of this document, has been consulted in line with Article 4(4) of Regulation 1049/2001.

You can have access to the parts of these documents which are not covered by any of the exceptions falling under Article 4 of the Regulation (EC) No 1049/2001, that is, the first pages of all documents including the cover notes and transmission letters, and a part of document 6694/20 containing written remarks from Belgium on the process for the national selection of candidates for the office of European Prosecutor. Please find attached partially accessible versions of your requested documents 6694/20, 9348/20, 9907/19, 10530, 13105/19, 14273/19, 14822/19, 9670/1/20 REV 1.² However, I regret to inform you that full access cannot be given for the reasons set out below.

The signatures of the Member States' permanent representatives to the EU and the name of the Chair of the EPPO selection panel and his signature were redacted on the basis of Art. 4(1)(b) of

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

Regulation 1049/2001, in order to protect the privacy and the integrity of the individual, in particular in accordance with legislation regarding the protection of personal data³.

First, the requested documents, are comprised of, essentially, of written comments of member States and opinions of the selection panel concerning the assessment of the candidates' legal expertise, professional experience and ability to perform the duties of European Prosecutor, which contain personal data of the candidates for the appointment of the European Prosecutors. Therefore, they fall within the scope of the exception relating to the protection of the privacy and integrity of the individual (Article 4(1)(b) of Regulation (EC) No 1049/2001). The notion of personal data is interpreted broadly in the case-law of the Court. It covers both the factual elements concerning the candidates' professional experience and qualifications, and the selection panel's individual as well as comparative assessment of the candidate's merits.

According to established case law, where a request seeks to obtain access to a document including personal data, the legal framework on the protection of individuals with regard to the processing of personal data by the European institutions and bodies becomes applicable in its entirety.

More specifically, according to Article 9 of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, "*personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if:*

(a) the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the recipient; or

(b) the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.

(...) Union institutions and bodies shall reconcile the right to the protection of personal data with the right of access to documents in accordance with Union law".

In your request you have not established the necessity of the transfer of the personal data contained in the requested documents.

Second, the Council considers that full disclosure of the requested documents is likely to cause harm to the reputation of the candidates and therefore would prejudice their legitimate interests, including their integrity.

In particular, the disclosure of the information contained in the documents sought for public release, such as the assessment of the candidates' merits or the comparative assessment of merits of various candidates, could be relevant for any other position both in the public or the

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (OJ L 295, 21.11.2018, p. 39).

private sector for which the candidate could be considered in the future since it shows the capabilities of the candidate as a legal professional.

As such, the public release of the documents could have a significant negative impact on the public perception of the candidates' qualifications, which could in turn negatively impact their position and their chances to succeed in other competitions.

It follows that the disclosure of the requested documents is likely to undermine the protection of the candidates' integrity (Article 4(1)(b) of Regulation (EC) No 1049/2001), in the event that they carry out or intend to carry out paid work after the selection procedure is over or after their term as European Prosecutor has finished.

Under these circumstances, the GSC is unable to grant full public access to the requested documents revealing background data for assessing the suitability of the candidates to perform the duties as European Prosecutor, including the Member States comments on their proposed candidates and their ranking.

Third, the GSC considers that the disclosure of the requested documents, would seriously undermine the aims and quality of the selection and appointment procedures provided for in Articles 14 to 16 of the EPPO Regulation. It follows that your request to access these documents has to be refused on the basis of Article 4(3) of Regulation (EC) No 1049/2001.

The selection procedures for the post of European Prosecutor are very specific in nature. They include several distinct stages, starting with a selection procedure organised by the authorities of each of the interested Member States (Article 16(1) of the EPPO Regulation), an assessment by an independent panel set up in accordance with Article 14(3) of the EPPO Regulation and a final assessment on the basis of the documents brought to the attention of the Council by the interested Member States and the selection panel itself, leading to the adoption of a Council decision on the appointment (Article 16(3) of the EPPO Regulation).

In the light of that particular nature of those procedures, the publication of the selection panels' opinions, rankings and other documents in relation to the deliberations in the Council and its preparatory bodies would directly affect the confidential nature of the deliberations of the selection panel, as expressly foreseen in Rule IV of the operating rules of the selection panel⁴. It would also undermine the secrecy of deliberations of the Council and its various preparatory bodies involved in the assessment of the candidatures. Moreover, public access to documents produced on different stages of that process by different stakeholders would undermine the proper conduct of those procedures.

On the one hand, the disclosure of the requested documents would inevitably affect working methods of the Member States and of the selection panel in any future selection procedures. It could make the Member States and the panel be more restrained and guarded when giving the reasons for their assessment. That, over time, could lead to the situation that the Council would not

⁴ Council Implementing Decision (EU) 2018/1696 of 13 July 2018 on the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (*OJ L 282, 12.11.2018, p. 8–12*).

be able to obtain complete, relevant and useful explanation of the rationale for those assessments, whether favourable or unfavourable.

The disclosure of these documents is also likely to have a negative impact on the potential candidates interested to apply in the future for the post of European Prosecutor. Such disclosure might also dissuade certain, even highly qualified, individuals from applying in the future because, even if the assessment of their merits were favourable, the documents produced in the course of the procedure contain detailed comments on the abilities of the candidates, some of whom might fear a negative impact on their reputation.

It follows that the full disclosure of the documents sought could have broader systemic implications for the correct functioning of selection procedures for European Prosecutors.

Fourth, having examined the context in which the requested documents were drafted, on balance the General Secretariat of the Council could not identify any evidence suggesting the existence of an overriding public interest in their full disclosure. While the European Prosecutors play an essential role in implementing the tasks of the EPPO and the GSC recognises the importance of public awareness of the functioning of the Office, including its staff, the public would not benefit from accessing the details of the assessments of individual candidates by Member States or the selection panel. On balance, the prejudice to the interests protected by Article 4 of Regulation 1049/2001 is greater than the public interest in obtaining detailed information on the qualifications, professional experience and assessment of individual candidates.

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: 8 – **WeTransfer** link: <https://we.tl/t-LUKBspjRy6>

From: **DELETED**

Sent: Wednesday, January 7, 2026 1:24 PM

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

Subject: Re: Ref. 25/3327 - Ares(2025)11420617

Dear Madam/Sir,

Pursuant to Article 7(2) of Regulation (EC) 1049/2001, I would like to submit a confirmatory application regarding my request for access to documents (Ref 25/3327), which was only partially satisfied.

Looking forward to your reply,

Kind regards,

DELETED

*To: Council of the European Union General
Secretariat
Directorate-General Communication and Information
Information Services Unit/Transparency
Ref. 25/3327*

CONFIRMATORY APPLICATION

Dear Mr Florindo,

I am writing to you regarding the Council's decision to allow me very limited (amounting to no) access to documents 6694/20, 9348/20, 9907/19, 10530, 13105/19, 14273/19, 14822/19, 9670/1/20 REV 1, which I requested on 05/11/2025. I need these documents for my academic research of the independence of the EPPO, in particular the appointment of European Prosecutors.

According to your letter, the decision to limit the access to these documents is justified by the following reasons:

- The documents contain signatures of permanent representatives to the EU and the name of the Chair of the EPPO selection panel;
- Potential harm to the reputation of the candidates;
- The disclosure of the documents would seriously undermine the aims and the quality of the selection and appointment procedures for European Prosecutors;
- Affect the working methods of the Member States;
- Potential negative impact on the candidates' perspectives for future applications;
- No evidence of an overriding public interest.

In this confirmatory application, I would like to challenge these claims, pursuant to Article 7(2) of Regulation (EC) No 1049/2001.

The requested documents contain signatures and names

While redacting the signatures of Member States' permanent representatives to the EU is understandable and I do not consider their disclosure as necessary for my research, it is perplexing for me why the name of the chairperson of the EPPO selection panel would be redacted. The decision on the appointment of the members of the selection panel, pursuant to Article 14(3) of Regulation 2017/1939, is published in the Official Journal of the EU, along with their names.¹

In addition, the members of the selection panel play an important, if not essential, role for the selection of candidates for European Prosecutors. Article 16(1) of the EPPO Regulation provides three cumulative criteria to be taken into account by the panel. Most of the documents I requested, as per the description you provided me with, contain the opinions of

¹ 'Council Decision (EU) 2023/133 Appointing the Members of the Selection Panel Provided for in Article 14(3) of Regulation (EU) 2017/1939' art 1.

the selection panel on the candidates of several Participating States. It is to be assumed that they were only presented by the chairperson of the selection panel. There are no provisions in the EPPO Regulation or Regulation 1049/2001 that require, or at least suggest, such opinions to be developed in secrecy.

As to the content of the opinions, it could be argued that they are preparatory documents, since they are not legally binding,² suggesting further work may be pending. However, if the selection panel finds that a candidate does not meet the criteria listed in Article 16(1) of the EPPO Regulation, the opinion of the selection panel becomes legally binding, thus making an opinion tantamount to a decision in this particular situation. This is a higher standard than the one provided by the Court of Justice.³ In addition, the practice so far has shown that deviation from the selection panel's ranking is rather the exception, which makes it even more interesting for the public to know the reasons why.

The European Prosecutors play an important role in the EPPO. They are public servants with a responsibility to supervise the work of the European Delegated Prosecutors and to propose decisions in the Permanent Chambers they are part of⁴. The EPPO Regulation also provides a possibility a Permanent Chamber to delegate its decision-making powers to an EP to bring a case to judgment or to dismiss a case,⁵ which removes an important layer of control over an EP's decisions. Such powers demand significant transparency in the selection and subsequently appointment of EPs.

In addition, the EPs form an important layer within the EPPO's hybrid structure – the College. Its main task is to devise future strategies for the EPPO. Even though decisions within the College are taken by a simple majority, having a voice on matters not all EPs are fluent in may have an impact, which requires accountability and transparency as to the reasons why a candidate for an EP was preferred over the expert opinion of the selection panel.

Pursuant to Article 6 of the EPPO Regulation,⁶ the Member States have a duty to guarantee the independence of the EPPO at all levels, including the European Prosecutors. Ensuring a transparent process of appointment is a way to achieve that. This is especially pertinent in light of the first disciplinary proceedings launched against a European Prosecutor.⁷ Since the Council decided not to respect the ranking proposed by the selection committee,⁸ it is in the interest of the public to know the reasons behind this decision in order to assess whether the EPPO's independence may be at risk. The decision to suspend the Bulgarian European

² 'Council Regulation (EU) 2017/1939 of 12 October 2017 Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office ('the EPPO')' art 16(2).

³ *T-540/15 Emilio De Capitani v European Parliament*, 22 March 2018 [2018] General Court (7th Chamber) ECLI:EU:T:2018:167 [100].

⁴ 'Council Regulation (EU) 2017/1939 of 12 October 2017 Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office ('the EPPO')' (n 2) art 12.

⁵ *ibid* 10(7).

⁶ 'Council Regulation (EU) 2017/1939 of 12 October 2017 Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office ('the EPPO')' (n 2).

⁷ 'College of the EPPO Decides to Initiate Disciplinary Proceedings against the Bulgarian European Prosecutor | European Public Prosecutor's Office' <<https://www.eppo.europa.eu/en/media/news/college-eppo-decides-to-initiate-disciplinary-proceedings-against-bulgarian-european>> accessed 2 December 2025.

⁸ General Secretariat of the Council, '9628/10 "I" ITEM NOTE EPPO-Council Implementing Decision Appointing the European Prosecutors of the European Prosecutor's Office' 5(14).

Prosecutor was based on concern about the integrity of the institution in the eyes of the public.⁹ This, in my view, provides sufficient evidence of the existence of an overriding public interest.

The exceptions in Article 4¹⁰ are, according to the Court, to be applied strictly. The fact that a piece of information falls within the scope of this article does not suffice.¹¹ Therefore, I am availing myself of the opportunity, pursuant to Article 9 of Regulation (EU) 2018/1725, to argue that there is an overriding public interest in the disclosure of the opinions and the name of the chairperson of the selection panel. This is in line with Article 6 of the EPPO Regulation, which requires EU institutions and the Member States to respect the EPPO's independence. This would also be in line with recitals 1 and 2 of Regulation 1049/2001.

Potential harm to the reputation of the persons mentioned in the requested documents and their applications in other competitions in the future

The Council is of the view that the full disclosure of the requested document 'is likely' to harm the reputation of the candidates, relying on the concept of 'legitimate interest'. However, the Council has failed to explain in detail how specifically and actually the disclosure of the names of candidates for public positions, such as European Prosecutors, and their ranking, would harm their reputation and legitimate interests, as required by the case law of the Court of Justice.¹²

Moreover, any risks the Council deems likely must not be hypothetical but 'reasonably foreseeable'.¹³ The concern that the disclosure of the information in the documents may affect the candidates' in future applications seems hypothetical and is not specified in detail.

Therefore, I invite the Council to provide a very specific analysis as to how the disclosure of the names of candidates and their ranking may harm their reputation or future applications for similar positions.

Potential undermining of the decision-making process of the Member States

The Council considers that the full disclosure of the requested document would 'seriously undermine' the decision-making process for the appointment of European Prosecutors. This is another exception on which the Council relies and for which the Court said must be interpreted strictly.¹⁴ Such a reliance could be justified if the decision-making process were still ongoing, which is not the case.

The Council has a duty to demonstrate, by providing evidence, that the full disclosure of the requested documents will, specifically and actually, seriously undermine the decision-making process of the appointment of European Prosecutors.¹⁵

⁹ 'Wrath of Grapes' (*POLITICO*, 28 March 2025) <<https://www.politico.eu/newsletter/brussels-playbook/wrath-of-grapes/>> accessed 2 December 2025.

¹⁰ 'Regulation (EC) No 1049/2001 of the European Parliament and of the Council Regarding Public Access to Provisions Concerning Public Access to Council Documents'.

¹¹ *T-540/15 Emilio De Capitani v European Parliament*, 22 March 2018 (n 3) [61, 62].

¹² *ibid* 62.

¹³ *ibid*.

¹⁴ *ibid* 61.

¹⁵ *ibid* 111.

Lack of evidence the disclosure of the documents is of overriding public interest

As mentioned above, the European Prosecutors play an important role in the EPPO by supervising investigations, proposing decisions related to investigations to the Permanent Chambers they are members of, and by contributing to the overall direction of the EPPO as members of the College.

The first disciplinary proceedings launched against a European Prosecutor reveals the need for more scrutiny of the process of appointment of European Prosecutors.

I hope that with the above arguments I have managed to convince you of the necessity to disclose the requested personal data in line with Article 9 of Regulation (EU) 2018/1725.

Looking forward to your reply,

Kind regards,

DELETED