

Brussels, 27 March 2026
(OR. en)

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API 63
INF 87

NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents - Confirmatory application N° 16/c/01/26
- Information to delegations

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 21 January 2026 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 4 March 2026 (Annex 2);
- the confirmatory application dated 25 March and registered on 26 March 2026 (Annex 3).

From: document-request@cis.consilium.europa.eu <document-request@cis.consilium.europa.eu>
Sent: Wednesday, January 21, 2026 4:57 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

I submit this request on my own behalf.

Name of the organisation

Full postal address

Telephone

Requested document(s)

CM 1112 2026 INIT

CM 1113 2026 INIT

CM 1113 2026 ADD 1

WK 13481 2025 REV 2

1st option

2nd option



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, 4 March 2026

DELETED

E-mail: **DELETED**

Ref. 26/0266

Request made on: 21.01.2026

Deadline extension: 11.02.2026

Dear **DELETED**,

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

Please note that document **CM 1112/26** has in the meantime become public and it is available in the [Public register of the Council](#).

I regret to inform you that access to documents **CM 1113/26 INIT+ADD1**, as well as **WK 13481/2025 REV 2** cannot be given for the reasons below.

Document **CM 1113/26** dated 9 January 2026 contains a communication regarding the end of the written procedure concerning the EU-Mercosur agreements.

Document **CM 1113/26 ADD 1** dated 9 January 2026 is an addendum to document **CM 1113/26** and contains declarations from two Member States.

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).

Releasing the information contained in these documents would jeopardize relations between the European Union and Mercosur, as it would reveal the official positions of individual EU Member States in the current sensitive context of international trade relations.

Such release would therefore compromise the protection of the public interest with regard to international relations. Consequently, the Secretariat-General must deny access to these documents.²

Document WK 13481/2025 REV 2 contains a Presidency compromise proposal concerning draft Council Decisions on the signing and the conclusion of the EU – Mercosur iTA.

This is an intermediate document. As there are substantial changes between this version and the final document, which is public, releasing this intermediary version could lead to misinterpretation.

For the Council to reach an agreement, its Member States held initial consultations and exploratory talks. This document contains suggestions that were put forward for internal use, as part of deliberations within the Council. Release of this information would harm future decision-making on similar issues.

Disclosure of the document would therefore seriously undermine the decision-making process of the Council, even after the specific decisions have been adopted.

Having examined the context in which the document was drafted, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in its disclosure.

As a consequence, the General Secretariat has to refuse access to this document, as well.³

We have also looked into the possibility of releasing parts of the documents.⁴ However, as the information contained in the documents forms an inseparable whole, the General Secretariat is unable to give partial access at this stage.

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(1)(a) third indent of Regulation (EC) No 1049/2001.

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

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

From: **DELETED**

Sent: Wednesday, March 25, 2026 6:47 PM

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

Subject: Confirmatory application: Ref. 26/0266

TO:

Council of the European Union

General Secretariat

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit / Transparency

FROM:

DELETED

E-mail: **DELETED**

Confirmatory Application

Based on Article 7(2) of the Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter "**Regulation 1049/2001**")

I hereby submit the confirmatory application for the access to the documents **CM 1113/26 INIT+ADD1**, as well as **WK 13481/2025 REV 2 ("Requested Documents")** and I request to annul the first decision of 4 March 2026 ref. 26/0266 with which I was refused access to above mentioned Requested Documents.

JUSTIFICATION

1. On 21 January 2026, I have requested access to Requested Documents via electronic form available in the Register application.
2. On 4 March 2026, I have received the decision ref. 26/0266 refusing me access to Requested Documents invoking exceptions described in Article 4(1)(a) third indent of Regulation (EC) No 1049/2001 (protection of the public interest as regards the international relations) and Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001 (undermine the institution's decision-making process).

3. As a preliminary observation, it should be noted that, in accordance with recital 1 of Regulation No 1049/2001, that regulation reflects the intention expressed in the second paragraph of Article 1 TEU ‘*of marking a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen*’. As it is stated in recital 2 of Regulation No 1049/2001, the right of public access to documents of the institutions is related to the democratic nature of those institutions.^[1] Thus, the purpose of Regulation No 1049/2001, as indicated in recital 4 and Article 1 thereof, is to give the public a right of access to documents of the institutions and agencies that is as wide as possible.^[2] That right is nonetheless subject to certain limitations based on grounds of public interest like international relations or protection of the internal decision making process, expressed in Article 4 (1)a third indent and Article 4(3) of the Regulation 1049/2001.^[3] But, as such **exceptions** derogate from the principle of the widest possible public access to documents, they **must be interpreted and applied strictly** with the result that the mere fact that a document concerns an interest protected by an exception is not in itself sufficient to justify application of the exception.^[4]
4. The case at hand deals with the request to access the documents that were prepared in the process of the Council preparation for signing and concluding the EU-Mercosur Agreement in a form of two separate documents that it an EU-Mercosur Partnership Agreement (hereafter “**EMPA**”) and an interim Trade Agreement (hereafter “**iTA**”) with the four founding members of Mercosur – Argentina, Brazil, Paraguay and Uruguay.
5. The topic of signing and concluding these international agreements cause a profound public debate in the whole European Union. The issue raised many concerns and there was clear not unanimity among the Member States due to signing and conclusion of the EU-Mercosur Agreement. Some national parliaments in various Member States have already signalled their opposition to the ratification of the EU-Mercosur Agreement by adopting resolutions to that effect. That was also the main reason for the Commission to propose that the EU-Mercosur Agreement to be split in two legal documents namely EMPA and iTA, where the EMPA is a mixed framework agreement, which requires unanimous approval in the Council, the European Parliament’s consent and the ratification of all 27 Member States before it can fully enter into force, and iTA covers only those provisions falling under the exclusive competence of the EU and requires only a qualified majority in the Council and the European Parliament’s consent to enter into force.
6. Furthermore, the Council took a decision propose the provisional application of iTA that was not previously discussed nor envisaged. This proposition met the strong public outcry and lack of understanding.

[1] Case *T-851/16 Access Info Europe v. Commission*, §33, ECLI:EU:T:2018:69.

[2] Case *T-851/16 Access Info Europe*, §34.

[3] Case *T-851/16 Access Info Europe*, §35.

[4] Case *T-851/16 Access Info Europe*, §36.

7. The access to Requested Documents concerns the documents that contain the “*communication regarding the end of the written procedure concerning the EU-Mercosur agreements with declarations from two Member States*”. According to the Council “*it would reveal the official positions of individual EU Member States in the current sensitive context of international trade relations*”. Nevertheless, according to the case *T-590/23 De Capitani v. Council*^[5] the mere reference to the sensitive nature of the issue or its political importance cannot justify the refusal of access to the documents.^[6] As the Council stated these documents possess official information that should be available to the public. Furthermore, the exception to the right of access to documents under the first subparagraph of Article 4(3) of Regulation No 1049/2001 may no longer be relied on in respect of a procedure closed on the date on which the request for access was made.^[7] In the present situation, the decision already has been made and the public has a right to know based on the transparency principle that underpin the democracy and the rule of law.
8. Also, the exception of the public interest related to the international relations. The Council did not explained a specific, actual and non-hypothetical risk that allegedly exist in case of revealing these documents. It is not enough to invoke the exception as such but the Council should substantiate it claims why revealing Requested Documents that contain information on the written procedure and some Member States declaration poses the risk to the international relations.^[8] The existence of the existence of divergent opinions within the institutions is clearly not enough to substantiate that wider access to documents would have undermined the public interest in the field of international relations.^[9] Otherwise, one might conclude that any revelation of the official positions of individual Member States in legislative procedures regarding international relations is impossible - because any of them could have implications for pending or future procedures.
9. Moreover, as regards the exception in Article 4(3), second subparagraph, the Council has not demonstrated that disclosure of the Requested Documents would *seriously* undermine its decision-making process in the specific context of a procedure that is already closed. When relying on that provision an institution must show that access would “specifically and actually” undermine the protected interest and that the risk of that undermining is “reasonably foreseeable and not purely hypothetical”. In *ClientEarth and Leino-Sandberg v Council*, the Court annulled a refusal based, inter alia, on Article 4(3) because the Council had failed to identify concrete elements demonstrating such a specific and non-hypothetical risk in relation to the disclosure of Member States’ positions. In the present case, the Council merely invokes, in general terms, the “sensitive context of international trade relations” and the need to protect its internal decision-making, without explaining why, after the closure of the written procedure and the adoption of the decision, disclosure of the Requested Documents would still seriously undermine any subsequent phase of its decision-making.

[5] Case *T-590/23 De Capitani v. Council*, 29 October 2025, ECLI:EU:T:2025:1001

[6] Case *T-590/23 De Capitani*, §106 and Case *C-408/21P Council of the EU v. Laurent Pech*, ECLI:EU:C:2023:461.

[7] Joined Cases *T-682/21 ClientEarth AISBL v. Council* and *T-683/21 Päivi Leino-Sandberg v. Council*, ECLI:EU:T:2024:165, §96.

[8] Cases *T-682/21 ClientEarth AISBL* and *T-683/21 Päivi Leino-Sandberg*, §§112, 118.

[9] Case *T-529/09 In 't Veld v Council*, §§55-56, ECLI:EU:T:2012:215.

10. In addition, the case-law confirms that the temporal scope of Article 4(3) is limited: the exception cannot be relied upon in the same way once the relevant procedure is closed, since the principal justification for protecting the internal space to deliberate falls away. In the present case, the Council has not identified any specific, ongoing negotiating or internal decision-making step that would still be endangered by disclosure, beyond abstract references to a “sensitive” political climate.

11. It is apparent from Recital 2 of Regulation No 1049/2001 that openness enables the EU institutions to have greater legitimacy and to be more effective and more accountable to EU citizens in a democratic system.^[10] transparency enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system.^[11] Openness contributes to strengthening democracy by enabling citizens to scrutinise all the information which has formed the basis for a decision. The possibility for citizens to find out the considerations underpinning decision that influence their daily life and is highly sensitive, like the EU-Mercosur Agreement, is a precondition for the effective exercise of their democratic rights.^[12]

Taking above into account, I request to annul the decision of 4 March 2026, ref 26/0266 and grant a full access to the Requested Documents.

^[1] Case *T-851/16 Access Info Europe v. Commission*, §33, ECLI:EU:T:2018:69.

² Case *T-851/16 Access Info Europe*, §34.

³ Case *T-851/16 Access Info Europe*, §35.

⁴ Case *T-851/16 Access Info Europe*, §36.

⁵ Case *T-590/23 De Capitani v. Council*, 29 October 2025, ECLI:EU:T:2025:1001

⁶ Case *T-590/23 De Capitani*, §106 and Case *C-408/21P Council of the EU v. Laurent Pech*, ECLI:EU:C:2023:461.

⁷ Joined Cases *T-682/21 ClientEarth AISBL v. Council* and *T-683/21 Päivi Leino-Sandberg v. Council*, ECLI:EU:T:2024:165, §96.

⁸ Cases *T-682/21 ClientEarth AISBL* and *T-683/21 Päivi Leino-Sandberg*, §§112, 118.

⁹ Case *T-529/09 In 't Veld v Council*, §55-56, ECLI:EU:T:2012:215.

¹⁰ Case *C-408/21P Council of the EU v. Laurent Pech*, § 31.

¹¹ Case *C-408/21P Council of the EU v. Laurent Pech*, § 40.

¹² Case *C-408/21P Council of the EU v. Laurent Pech*, § 41.

^[10] Case *C-408/21P Council of the EU v. Laurent Pech*, § 31.

^[11] Case *C-408/21P Council of the EU v. Laurent Pech*, § 40.

^[12] Case *C-408/21P Council of the EU v. Laurent Pech*, § 41.