



Brussels, 10 September 2026
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INF 249

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application N° 48/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 23 July 2026 and registered on 24 July 2026 (Annex 1);
- the reply from the General Secretariat of the Council dated 4 September 2026 (Annex 2);
- the confirmatory application dated 9 September 2026 and registered on the same day (Annex 3).

From: PUBLIC INFORMATION SERVICE <publicinfo@consilium.europa.eu>
Sent: Monday, July 27, 2026 9:30 AM
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Subject: Article 255 Panel: opinions, voting records - **DELETED**

First name: **DELETED**
Family name: **DELETED**
Gender: **DELETED**
Email address: **DELETED**
Country of residence: **DELETED**
Language: EN

Deadline: 13/08/2026 17:00:00
Received On: 23/07/2026 22:39:29

Question:

Hello.

Under the COUNCIL DECISION (EU) 2021/2232 from 14 December 2021 a panel composed of 7 members was created as per Article 255 of the TFEU valid for the period 1 March 2022 to 28 February 2026.

Can you please provide the list of votes and opinions of this panel for all candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court" ? Both favourable as well as unfavourable votes and opinions.

Thank you



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 September 2026

DELETED

Email: **DELETED**

Ref. 26/2747

Request made on: 23.07.2026

Registered on: 24.07.2026

Deadline extension: 14.08.2026

Dear **DELETED**

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

We would like to thank you for your request for public access to the "*list of votes and opinions for all candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court*" issued by the panel established under Article 255 TFEU by Council Decision 2021/2232 of 14 December 2021, for the period 1 March 2022 to 28 February 2026. You requested both favourable as well as unfavourable votes and opinions.

The only documents that the General Secretariat of the Council identified as falling in the scope of your request are the opinions issued by the panel established under Article 255 TFEU for the period 1 March 2022 to 28 February 2026.

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 General Secretariat of the Council (GSC) considers that the requested documents fall within the remit of the exceptions relating to the protection of the public interest as regards privacy and the integrity of the individual (Article 4(1)(b) of Regulation (EC) No 1049/2001), the protection of the decision-making process (Article 4(3) of Regulation (EC) No 1049/2001), the protection of court proceedings (Article 4(2) second indent of Regulation (EC) No 1049/2001) and the protection of commercial interests (first indent of Article 4(2) of Regulation (EC) No 1049/2001).

At the outset, it must be noted that this approach is consistent with the conclusion of the European Ombudsman in her decision in case 1955/2017/THH on the Council of the European Union's refusal to grant public access to opinions evaluating the merits of candidates for appointment to the Court of Justice and the General Court of the European Union. In that decision, the European Ombudsman found that *'the overriding public interest in this case lies in protecting the Panel's decision-making process'* and that *'this constitutes a greater public interest than that of the public knowing further details of the Panel's opinions'* and concluded that *'the refusal of the Council to provide full public access to the opinions of the Panel on judicial appointments was justified'*².

It should be also stressed that in its activity reports³, the panel has stated that it considers that the disclosure of its opinions – which pertain to an assessment of candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court, and therefore contain personal data – would be likely to undermine the privacy of the candidates (Article 4(1)(b) of Regulation (EC) No 1049/2001). The panel is also of the opinion that the full disclosure of its opinions would undermine the aims and quality of the consultation and appointment procedures provided for in Articles 253 to 255 TFEU, notably because it would jeopardise the secrecy of the panel's deliberations and of the intergovernmental conference at which Member States appoint the Judges and Advocates-General (Article 4(2) and (3) of Regulation (EC) No 1049/2001).

The panel's opinions are intended exclusively for Member State governments and the positions it takes on the suitability of candidates for judicial office at EU level may not be disclosed to the public, either directly or indirectly. This stems from the operating rules of the panel annexed to Council Decision 2010/124/EU⁴ which provide that the deliberations of the panel *'shall take place in camera'*, the hearing of the candidate *'shall take place in private'* and that the panel's opinion *'shall be forwarded to the Representatives of the Governments of the Member States'*.

Taking into account the above considerations, the GSC is of the view that providing access to the requested documents would jeopardise the attainment of the objectives of Regulation (EC) No 1049/2001 for the reasons set out below.

First, the requested documents contain, in most of their parts, personal data pertaining to the candidates to whom they refer.

² Decision in case 1955/2017/THH on the Council of the European Union's refusal to grant public access to opinions evaluating the merits of candidates for appointment to the Court of Justice and the General Court of the European Union, paragraphs 54 and 56.

³ Seventh Activity Report of the panel provided for by Article 255 of the Treaty on the Functioning of the European Union, page 16, available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-07/2022.2597-qcar22002enn_002.pdf.

⁴ Annex to Council decision 2010/124/UE of 25 February 2010.

According to Article 3(1) 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 (Regulation (EU) 2018/1725), personal data is defined as '*any information relating to an identified or identifiable natural person*'. Moreover, the Court of Justice has ruled that professional data or information provided as part of a professional activity must also be characterised as personal data⁵, and that the fact that certain information has already been made public does not preclude its characterisation as personal data⁶.

Thus, both the factual elements concerning the candidates' professional experience and qualifications and the panel's assessment of the candidates' competences are to be classified as personal data.

Such data come under the exception provided for in point (b) of Article 4(1) of Regulation (EC) No 1049/2001 (protection of privacy and the integrity of the individual).

According to established case-law, where an applicant seeks to obtain access to a document that includes personal data, the legal framework on the protection of individuals with regard to the processing of personal data by the European institutions becomes applicable in its entirety.

More specifically, in accordance with Article 9 of Regulation (EU) 2018/1725, '*personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if:*

[...]

(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.

[...]

3. 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.'

It follows from this provision that it is up to the applicant to show whether the transfer of the requested personal data is necessary – that is to say, whether it is the most appropriate measure to achieve the objective pursued by the applicant and if it is proportionate to that objective. However, such a disclosure should not prejudice disproportionately the legitimate interests of the individual or individuals concerned.

⁵ Judgment of 29 June 2010, *Commission v Bavarian Lager*, C-28/08, EU:C:2010:378, paragraphs 66 to 76.

⁶ Judgment of 16 December 2008, *Tietosuojavaltuutettu v Satakunnan Markkinapörssi and Satamedia*, C-73/07, EU:C:2008:727, paragraphs 48 and 49.

In the case at hand, on the one hand, the necessity of the transfer of the requested personal data has not been established in the application. Indeed, the applicant makes no reference at all to the necessity to release these documents.

On the other hand, the disclosure of the requested personal data could cause harm to the reputation of the candidates and therefore would prejudice their legitimate interests.

The demanding professional requirements associated with the post of Judge usually attract individuals of a particularly high seniority and who often hold prominent positions, both at national and EU level, such as judges in the highest courts or renowned professors. The reputation of individuals in such positions would inevitably suffer greater damage should negative opinions concerning them be made public. Such damage could even have an effect on their potential career prospects, at both national and international level, even if the opinion of the Panel is on the suitability of the candidate specifically to perform the functions of a Judge or Advocate-General of the Court of Justice or the General Court.

Under these circumstances, providing access to the parts of the opinions concerning the assessment of the suitability of the candidates to perform the duties of a Judge of the Court of Justice would not only jeopardise the attainment of the objectives of point (b) of Article 4(1) of Regulation (EC) No 1049/2001, but would also be in breach of Regulation (EU) 2018/1725 on the protection of personal data.

In addition, it is stressed that the automatic prevalence of the principle of transparency over data protection has been expressly ruled out by the Court. Indeed, Regulation (EC) No 1049/2001 only provides a right of public access to the extent that none of the exceptions provided by the said Regulation applies.

In any case, should the necessity of transfer be justified by the objective to ensure public trust in the EU courts and more specifically to allow public control over the competence and qualifications of the members of the EU judiciary, these are exactly the objectives that led to the establishment of the panel in the first place and that form the basis of the panel's operating rules, which provide for the confidentiality of its activities. In that regard, it is noted that if transparency is crucial to allow the citizens to hold political decision-makers accountable and therefore to strengthen the democratic legitimacy of the EU institutions that are representative in nature, it plays a very different role in relation to the EU judiciary. The legitimacy of the Judges is first and foremost assured by their independence, objectivity and professional competence, not by the power of public opinion.

In this context, the disclosure of personal data would, for the reasons that will be set out below, risk compromising the effective selection of suitable candidates for the posts of Judges and Advocates-General and would therefore undermine, rather than pursue, the objective of ensuring the public's trust in the EU courts.

In any event, the panel already publishes detailed reports of its activities, which provide an accurate account of its working methods and of the criteria used to assess the candidates. This information suffices to reassure the public on the fairness of the selection procedure and to guarantee that the best candidates will be retained.

Secondly, disclosure of the requested documents would seriously undermine the decision-making process leading to the appointment of Judges.

The publication of the panel's opinions would affect the confidentiality of the procedure for assessing the suitability of the candidates. In that regard, it should be recalled that the principle of secrecy regarding assessment bodies' proceedings is widely acknowledged in EU law and finds its justification in the need to guarantee the independence of the assessment bodies and the objectivity of their proceedings, by protecting them from all external interference and pressures. This rationale applies, of course, all the more to the panel provided for in Article 255 TFEU.

In the case of the panel, the principle of confidentiality has been expressly enshrined in the panel's operating rules, which set out a number of specific provisions concerning the arrangements for holding panel meetings and a specific system of circulation of and access to documents. Needless to say, those rules have to be coordinated with the provisions of Regulation (EC) No 1049/2001.

According to well-established case-law, when potential conflict exists between the provisions of Regulation (EC) No 1049/2001 and a specific set of rules regulating the circulation of and access to documents in the framework of a specific procedure, the conflict has to be solved by interpreting the exception provided for in Regulation (EC) No 1049/2001 in line with those rules. This ensures that the procedure to which those rules apply operates correctly and guarantees that its objectives are not jeopardized.

Typically, this coordination is carried out by the recognition of a general presumption. Such a presumption is based on the fact that access to a document involved in the relevant procedure would be incompatible with the proper conduct of that procedure and aims to ensure the integrity of that procedure by limiting the intervention of third parties.

In the present situation, there is no doubt that the disclosure of the requested documents would undermine the conduct of the selection procedure, and notably its confidential nature, as expressly provided for in the panel's operating rules. It follows that, in line with the case-law of the EU courts⁷, the documents are covered by a general presumption according to which the disclosure of the panel's opinions would, as a matter of principle, seriously undermine the panel's decision-making process.

⁷ See, for example, judgment of 12 November 2015, *Alexandrou v Commission*, T-515/14 P and T-516/14 P, EU:T:2015:844, paragraph 88 and following.

But even if the existence of a general presumption was put in question, the serious risk for the decision-making process leading to the appointment of members of the EU judicature results from a number of circumstances.

To start with, a number of the considerations mentioned above in relation to the prejudice to the candidates' reputation have broader systemic implications for the correct functioning of the selection procedure for Judges and Advocates-General.

Disclosure of an opinion, be it unfavourable or favourable, could dissuade future qualified candidates from applying, for fear of any possible negative impact that the panel's opinions could have on their reputation.

This 'chilling effect' is linked to the fact that potential candidates are usually individuals of particularly high seniority and visibility at national level, who could be deterred from participating in the selection procedure if their reputation might be put at risk.

Furthermore, disclosure of its opinions would affect the working methods of the panel. In particular, the panel could become more restrained and more guarded when drafting its written opinions. This would be unfortunate, firstly because it would greatly reduce the usefulness of the panel's opinions, with the effect of rendering more difficult the work of the intergovernmental conference which is called to appoint Judges and Advocates-General. It could also cause the panel to decide to have more systematic recourse to the possibility, provided for in its operating rules, to present its opinions to the intergovernmental conference orally.

As mentioned above, the panel provides its opinions to an intergovernmental conference composed of representatives of the Member States that appoint the Judges and Advocates-General by common accord. Disclosure of the opinions of the panel would inevitably attract the attention of the public and possibly the media towards the assessment of the candidates. This in turn could lead to a politicisation of the issue and the adoption of politically postured positions, thereby significantly reducing Member States' margin for manoeuvre in the deliberations relevant for the adoption of a decision by common accord. In the framework of a political discussion on the appointments, the heretofore much-respected opinion of the panel could be called into question in light of considerations of a political nature, which would ultimately affect the quality of the selection of Judges and Advocates-General.

For all the reasons stated above, disclosure of the requested opinions would undermine the decision-making process leading to the appointment of Judges and Advocates-General and therefore would jeopardize the attainment of the objectives of Article 4(3) of Regulation (EC) No 1049/2001.

Thirdly, full disclosure of the Panel's positive opinions could seriously undermine the protection of court proceedings. Indeed, it cannot be excluded that positive opinions may contain remarks or observations or point out less solid elements in the candidate's qualifications or profile. If disclosed, that assessment could become the topic of a public debate and cast a shadow on the profile of serving judges of the EU jurisdictions. Depending on the type of observations made in the positive opinion, the image of knowledge, expertise, objectivity, or effectiveness of the Judge concerned may be undermined or put in question in the public debate. This would in turn affect the reputation of the Court as a whole in the eyes of the public and even provoke requests or criticisms by the party to the proceedings. In short, it could create difficulties for the orderly and serene conduct of court proceedings.

Lastly, full disclosure of the requested documents could undermine the protection of the candidates' commercial interests, in the event that the candidates were to carry out paid work as lawyers or legal advisers.

While an opinion of the panel concerns the suitability of a candidate for a specific position, the fact remains that the evaluation carried out by the panel takes into account the file submitted by the candidate, his academic record, his professional experience and his performance at interview. All this information would be relevant for any other position, in either the public or the private sector, for which the candidate might later be considered, since it shows the capabilities of the candidate as a legal professional. Therefore, it cannot be denied that the disclosure of, in particular, unfavourable opinions could have a negative impact on the candidates' chances of succeeding in other selection procedures.

Consequently, disclosure of the opinions of the panel would jeopardize the attainment of the objectives of Article 4(2) of Regulation (EC) No 1049/2001.

As regards the existence of an overriding public interest in disclosure, on balance, the principle of transparency which underpins Regulation (EC) No 1049/2001 would not, in this case, prevail over the abovementioned interests protected under the exceptions laid down in Article 4(2) and (3) of Regulation (EC) No 1049/2001 in such a way as to justify disclosure of the documents.

It must be acknowledged that transparency – and more specifically legislative transparency – plays a crucial role in the correct functioning of the EU democratic system, enshrined as it is in the Treaties, secondary legislation and the relevant case-law.

However, as indicated above, it must be underlined that in a democratic society, transparency and public participation do not have the same role in relation to legislative activity and the role of the judiciary.

Magistrates are subject only to the law. Their position cannot be compared to that of politicians or citizens' representatives. As a consequence, the procedure for their appointment needs to strike a balance between the need to select the candidates with the best legal expertise, the greatest professional experience and the most reliable guarantees of objectivity, and the principle of transparency.

In the case at hand, such a balance is satisfied by the significant level of transparency that is already assured by the panel's periodic publication of detailed activity reports, which, as explained above, provide information about its working methods, its criteria for assessing candidates and its overall yearly activity.

However, when it comes to the publication of individual opinions on the suitability of candidates for the post of Judge or Advocate-General, on balance, the public interest in having access to those opinions does not override the interests in the protection of the decision-making process and the commercial interest of the candidates.

In light of the above, the GSC concludes that full disclosure of the requested documents would jeopardize the attainment of the objectives of Regulation (EC) No 1049/2001. The possibility of partially disclosing the opinions concerned by your request in accordance with Article 4(6) of Regulation (EC) No 1049/2001 has also been examined. Partial access could be granted to those parts of the requested documents which are not covered by the aforementioned exceptions provided for in Article 4 of Regulation (EC) No 1049/2001.

Thus, a redacted version of seven opinions issued by the panel in the period between 1 March 2022 to 28 February 2026 by way of a sample (reflecting the parts to which partial access is granted) is attached.

Your request covers a very large number of documents, the partial disclosure of which entails a significant administrative burden. Should you consider that having partial access to opinions of the panel, in a redacted version, further to the ones that are disclosed with the present reply, would be meaningful to you, the General Secretariat of the Council stands ready to find a fair solution in the sense of Article 6 (3) of Regulation 1049/2001 and we would suggest that you indicate which documents, based on the year they were issued, are more relevant for the purposes of your request.

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 : 7

From: **DELETED**

Sent: Wednesday, September 9, 2026 3:11 PM

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

Subject: Re: Ref. 26/2747 -- Confirmatory application

Dear Transparency team,

I thank you for having taken into consideration my initial request, however I wish to lodge this Confirmatory application under Article 7(2) of Regulation (EC) No 1049/2001 for review of the decision of 4 September 2026 (Ref. 26/2747)

Preliminary statement

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (the "Regulation"), I hereby request the Council of the European Union to review the initial decision of the General Secretariat of the Council (GSC) dated 4 September 2026 (Ref. 26/2747). By that decision, the GSC refused full access to the documents falling within the scope of my initial request of 23 July 2026 and granted only nominal partial access to a sample of seven heavily redacted opinions from which every evaluative element and the final conclusion were suppressed.

The right of access to documents held by the institutions is guaranteed by Article 15(3) TFEU and Article 42 of the Charter of Fundamental Rights of the European Union (the "Charter"). Under settled case-law, Regulation No 1049/2001 is designed to confer the fullest possible effect to that right (Sweden and Turco v Council, Joined Cases C-39/05 P and C-52/05 P, EU:C:2008:374, para. 33). Any exception to that principle laid down in Article 4 must be interpreted and applied strictly (Council v Access Info Europe, Case C-280/11 P, EU:C:2013:671, para. 30).

The initial reply is vitiated by likely errors of law, errors of assessment, unlawful invocation of an unrecognized general presumption, failure to state reasons on separable parts of the request.

Summary of grounds for review

1. Failure to state reasons and breach of Article 41 of the Charter on aggregate votes and outcomes: The GSC failed to decide on or give any legal reasons for withholding the list/table of votes and aggregate outcomes, while suppressing the conclusion from every sample opinion.
2. Error of assessment in the proportionality and balancing tests: The core factual premise of the GSC's refusal—that the panel's published activity reports provide adequate alternative transparency—is untrue. No activity report or aggregate statistics exist or have been published for the entire 2022–2026 mandate.
3. Breach of the obligation to conduct a concrete and individual examination: The GSC invoked 4 distinct exceptions en bloc and applied identical redactions across structurally disparate procedures and categories.
4. Error of law in creating a general presumption of non-disclosure: The GSC created an unauthorized general presumption for Article 255 panel opinions. Alexandrou v Commission is legally distinguishable, and the CJEU has ruled that institutions cannot extend presumptions ex nihilo.
5. Breach of the hierarchy of norms: Secondary internal operating rules (annexed to Council Decision 2010/124/EU) cannot displace, amend, or widen the statutory exceptions established by Regulation No 1049/2001.
6. Misapplication of Article 4(3) of Regulation No 1049/2001: The appointment procedure is closed; the GSC demonstrated no continuing serious harm; and the decision-making process described belongs to an intergovernmental conference of Member States, not an institution.

7. Misapplication of the court proceedings exception (Article 4(2), 2nd indent): The opinions were drawn up for an administrative appointment process, not specific or pending judicial proceedings.
8. Misapplication of the commercial interests exception (Article 4(2), 1st indent): The GSC relied on speculative professional contingencies. Serving EU judges are statutorily prohibited from engaging in commercial legal practice under Article 4 of the CJEU Statute.
9. Misapplication of Article 4(1)(b) of Regulation No 1049/2001 and Regulation (EU) 2018/1725: Anonymised opinions and objective evaluation criteria are not personal data under the objective identifiability standard (Breyer; SRB v EDPS). For identified data, transfer is necessary and justified under Article 9(1)(b) of Regulation 2018/1725.
10. Misuse of Article 4(6) and Article 6(3) regarding administrative burden: Administrative burden is not an independent exception under Article 4. A sample cannot substitute for an individual assessment. A constructive sequencing proposal is offered strictly without prejudice to the scope of access.
11. Misapplication of the European Ombudsman Precedent: Decision 1955/2017/THH is non-binding, distinguishable on the facts, and inverted the statutory overriding public interest test.
12. Existence of an Overriding Public Interest in Disclosure: The constitutional requirement of judicial independence under Article 19(1) TEU and the unprecedented volume of litigation testing Council acts before the General Court during 2022–2026 establish an undeniable public interest in transparency.

I. The request under review and procedural irregularity

1. Scope of the Request

By application of 23 July 2026, I sought access to:

1. An aggregate list, table, record, or minute of the votes and outcomes (favourable and unfavourable) of the Article 255 TFEU panel for the period 1 March 2022 to 28 February 2026;
2. The full text of all opinions issued by the panel during that period;
3. In any event, and as a lesser measure under Article 4(6), all opinions in anonymised or redacted form.

The GSC unilaterally truncated this request, asserting that "the only documents... identified as falling in the scope of your request are the opinions," entirely ignoring component (1) and withholding outcome data without justification.

2. Expired time limit

The GSC registered the request on 24 July 2026 and extended the deadline under Article 7(3) of the Regulation to 14 August 2026. The initial decision was issued on 4 September 2026—three weeks after the statutory time limit had expired. While this procedural default does not affect the admissibility of this confirmatory application, it may constitute an infringement of the principle of good administration guaranteed by Article 41 of the Charter.

II. Analysis of the sample disclosures: failure of concrete examination

The seven redacted opinions enclosed with the initial reply demonstrate that the GSC failed to carry out a genuine concrete and individual examination:

1. Identical Cut-Point Across Distinct Procedures: The 7 opinions concern four distinct judicial offices and appointment cycles (General Court 2019, 2022, 2025 renewals; CJEU Judge 2024; Advocate-General 2024; and a post under Regulation 2015/2422). Across hearings (auditions) and file examinations (examen sur dossier), the redaction falls at the exact same typographical line after introductory boilerplate.
2. Total Suppression of the Operative Conclusion: The GSC did not merely withhold candidates' names; it excised the word "favourable" or "unfavourable." A conclusion detached from a name contains no evaluative reasoning and no personal data.

3. Severability of Administrative Information: In the sample, the GSC disclosed the names of panel members present and cohort expiry dates. This proves that structural and procedural data are severable from individual assessments.

III. Grounds for Review

Ground 1: Infringement of Article 296 TFEU and Article 41 of the Charter (list of votes and outcomes left undecided)

Under Article 296 TFEU and established transparency case-law, an institution is legally required to state the individual grounds on which access to each requested category is refused (*Verein für Konsumenteninformation v Commission*, Case T-2/03, EU:T:2005:120).

The GSC failed to state whether an aggregate list, table, or record of votes and outcomes exists, whether searches were conducted, or which Article 4 exception applies to it. Furthermore, by redacting the outcome from every sample opinion, the GSC substantively refused outcome data without a single sentence of reasoning. This constitutes a patent failure to state reasons (*défaut de motivation*).

An aggregate table containing numerical outcomes without candidate names does not engage privacy (Article 4(1)(b)), commercial interests, court proceedings, or decision-making processes.

Ground 2: Manifest error of assessment regarding the absence of published activity reports

At pages 4 and 7 of the initial decision, the GSC's balancing exercise under Article 9(1)(b) of Regulation 2018/1725 and Article 4(2)–(3) of Regulation 1049/2001 relies decisively on the claim that:

"the panel already publishes detailed reports of its activities, which provide an accurate account of its working methods and of the criteria used... This information suffices to reassure the public on the fairness of the selection procedure..."

This premise is false. The panel's official register (comite255.europa.eu) confirms that the last published report is the Seventh Activity Report (14 July 2022), accounting solely for the work of the preceding panel up to 28 February 2022.

For the entire four-year mandate covered by my request (1 March 2022 to 28 February 2026), the Article 255 panel has published zero activity reports, zero statistics, and zero accounts of its working methods.

A legal balance struck against disclosure by relying on a compensatory transparency mechanism that does not exist constitutes a manifest error of assessment that vitiates the entire decision.

Ground 3: Breach of the requirement for a concrete and individual examination

An institution refusing access must explain how disclosure could specifically and actually undermine the protected interest, showing that the risk is reasonably foreseeable and not purely hypothetical (*Sweden and Turco*, paras. 49, 68; *Council v Access Info Europe*, para. 31).

The GSC invoked four exceptions en bloc and applied identical, speculative reasoning across an estimated 80 to 100 opinions. The identical redaction cut-points across four different procedures confirm that the refusal was applied mechanically and categorically, in violation of established case-law.

Ground 4: Error of law concerning the existence of a general presumption of non-disclosure

The GSC asserts that Article 255 panel opinions are covered by a "general presumption" of confidentiality, relying solely on *Alexandrou v Commission* (Joined Cases T-515/14 P and T-516/14 P). This reliance is legally flawed:

1. *Alexandrou* concerned EPSO selection boards under the Staff Regulations, where secrecy is explicitly mandated by primary legislation (Annex III, Article 6 of the Staff Regulations).
2. The Article 255 panel is not an EPSO board, and candidate judges are not EU officials undergoing staff recruitment!

3. The CJEU has held that general presumptions are strictly exceptional, must be interpreted restrictively, and cannot be created or extended by an institution of its own motion to new categories of documents (*ClientEarth v Commission*, Case C-57/16 P, EU:C:2018:660, paras. 80–81). No general presumption exists in EU law for Article 255 opinions.

Ground 5: Breach of the hierarchy of norms (operating rules cannot override Reg. 1049/2001)
The GSC argues that the panel's operating rules (Decision 2010/124/EU)—which provide for in camera deliberations and closed hearings—require recognizing a presumption of non-disclosure. Internal rules of procedure adopted by the Council are inferior in the hierarchy of EU norms to Regulation 1049/2001 (an act of the European Parliament and Council adopted under Article 15(3) TFEU). Internal procedural rules govern document routing; they cannot amend statutory exceptions or contract out of Treaty-guaranteed access rights (*Access Info Europe*, paras. 40–48).

Ground 6: Misapplication of Article 4(3) of Reg. 1049/2001 (protection of decision-making)

1. Ambiguity of subparagraph: The GSC failed to specify whether it relies on the first or second subparagraph of Article 4(3).

2. The procedure is closed: All judicial appointments for the 2022–2026 cycle have been concluded. Where a decision has been taken, access can only be refused under the second subparagraph if the institution provides specific evidence that disclosure would seriously undermine future decision-making (*Sweden v MyTravel Group and Commission*, Case C-506/08 P, EU:C:2011:496, paras. 78–82). The GSC offered only generalized, hypothetical statements.

3. Temporal Inapplicability (Article 4(7)): Opinions issued in 2022 are over four years old. The GSC conducted no temporal analysis.

4. Whose Decision-Making Process?: Article 4(3) protects the decision-making process of institutions. Judges are appointed by common accord of the Governments of the Member States (Articles 253–254 TFEU). An intergovernmental conference of Member States is not an "institution" under Article 1(a) of Regulation 1049/2001.

5. Speculative Chilling Effect: The argument that candidacies would dry up or panel members would lose candour is an unsubstantiated speculation of official self-protection, directly rejected by the Court in *Access Info Europe* (paras. 68–74).

Ground 7: Inapplicability of the court proceedings exception (Article 4(2), second indent)

Under settled case-law (*Sweden and API v Commission*, Joined Cases C-514/07 P, C-528/07 P, and C-532/07 P, EU:C:2010:541; *Commission v Breyer*, Case C-213/15 P, EU:C:2017:563), Article 4(2), second indent, protects documents drawn up exclusively for the purposes of, or intrinsically linked to, specific and pending court proceedings.

Article 255 opinions are drawn up for an administrative appointment procedure, not for litigation before a court. The GSC identified not a single court proceeding affected. Alleged reputational impact on serving judges is an institutional concern, not an interest protected by the court proceedings exception. Furthermore, on the face of the GSC's letter, this exception was invoked solely against favourable opinions, leaving unfavourable opinions unshielded under this head.

Ground 8: Unestablished commercial interests (Article 4(2), first indent)

The GSC argues that disclosure could harm candidates if they resume private practice. This argument fails:

1. Career prospects and public reputations are personal/professional interests, not "commercial interests" under the first indent of Article 4(2).

2. For sitting Judges and Advocates-General, Article 4 of the Statute of the Court of Justice of the European Union (Protocol No 3) explicitly prohibits holding any gainful occupation during their mandate. They have no commercial legal practice to protect.

3. A purely contingent harm ("in the event that the candidates were to carry out paid work") demonstrates that the GSC failed to verify whether any commercial interest actually exists.

Ground 9: Misapplication of Article 4(1)(b) and Regulation (EU) 2018/1725

1. Anonymised Documents Are Not Personal Data: Under Recital 16 of Regulation 2018/1725 and established jurisprudence (Breyer, Case C-582/14; SRB v EDPS, Case T-557/20), data is anonymous if identification would require unreasonable time, effort, and cost. Redacting names and specific domestic career identifiers leaves legal reasoning and evaluative criteria that do not constitute personal data.

2. Necessity established under Article 9(1)(b) of Regulation 2018/1725: To the extent personal data is involved, transfer is necessary for democratic scrutiny of the appointment of the EU judicature. During the 2022–2026 mandate, the General Court faced an unprecedented volume of litigation reviewing the Council's own sanctions against Russia (e.g., Cases T-301/22 and T-304/22). Verifying that judicial appointees meet the strict constitutional standards of independence under Articles 253–255 TFEU is the only supranational check established by the Treaties (Simpson v Council, Joined Cases C-542/18 RX-II and C-543/18 RX-II). In the complete absence of published activity reports, access under Regulation 1049/2001 is the only available means of verification.

3. Distinct status of appointed judges: Candidates who were appointed are public figures exercising sovereign judicial authority; their privacy interests carry significantly less weight than those of private citizens.

Ground 10: Misuse of disproportionate burden and constructive sequencing

Administrative burden is not an Article 4 exception (Verein für Konsumenteninformation, para. 108). The GSC provided no data on the number of documents, total pages, or required staff hours to substantiate an unreasonable burden. Moreover, the GSC cannot rely on self-imposed redaction burdens to justify category-wide withholding.

Ground 11: Ombudsman decision 1955/2017/THH is neither binding nor precedential

Ombudsman findings do not bind the EU Courts or the Council. In case 1955/2017/THH, the Ombudsman accepted the existence of published Activity Reports as an adequate balance—condition entirely missing here. Furthermore, asserting that "the overriding public interest lies in protecting the panel's decision-making" inverts the statutory mechanism of Article 4(2)–(3), where an overriding public interest operates as an exception to secrecy, not a ground for it.

Ground 12: The overriding public interest in disclosure

Under Article 19(1) TEU, judicial independence requires that the rules and procedures governing judicial appointments dispel any legitimate doubt as to the court's imperviousness to external pressures (A.K. and Others, Joined Cases C-585/18, C-624/18, and C-625/18). Openness creates legitimacy (Sweden and Turco, para. 59). In circumstances where the Council's own legislative and restrictive measures are under active review by judges appointed during this mandate, and where no public activity report was found to have been published, there is an overriding public interest in the disclosure of these opinions, at the very least in anonymised form.

IV. Requests and formal sequencing proposal

I hereby request the Council to review the decision of 4 September 2026 and grant:

1. Full access to any list, table, register, or record of the votes and outcomes (favourable and unfavourable) of the Article 255 panel for the period 1 March 2022 to 28 February 2026; or an express statement that no such document is held, detailing the searches conducted.
2. Partial access under Article 4(6) to all opinions issued by the Article 255 panel during that period in anonymised form, redacting direct candidate identifiers while preserving the evaluation, legal benchmarks, and operative conclusions.
3. In any event, partial access to all unfavourable opinions in anonymised form issued during that mandate.

4. Disclosure of any Activity Report covering the period 1 March 2022 to 28 February 2026, or formal confirmation that none has been adopted.

5. A comprehensive schedule/table of all opinions issued between 1 March 2022 and 28 February 2026 indicating: date of opinion; court concerned (CJEU or GC); post (Judge or AG); procedure followed (hearing or file examination); and the operative outcome (favourable or unfavourable).

Phased sequencing (Constructive proposal under Article 6(3))

To assist the Council in managing administrative resources, and without prejudice to my legal entitlement to all requested documents, I propose processing the corpus in the following tranches:

- Tranche 1: The aggregate list of votes/outcomes and all unfavourable opinions in anonymised form.
- Tranche 2: Opinions issued in 2022 and 2023 in anonymised form.
- Tranche 3: Opinions issued in 2024, 2025, and 2026 in anonymised form

Best regards,

DELETED
