



Council of the  
European Union

Brussels, 15 May 2020  
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**LIMITE**

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**NOTE**

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	7293/20; 7294/20; 7958/20+ADD 1
Subject:	Public access to documents - Confirmatory application No 11/c/01/20

Delegations will find in Annex the Council's draft reply on the above-mentioned confirmatory application, as agreed by the Working Party on Information, following the written consultation launched on 6 May 2020 which ended on 13 May 2020.

**DRAFT REPLY ADOPTED BY THE COUNCIL ON ...  
TO CONFIRMATORY APPLICATION 11/c/01/20,  
made by email on 8 April 2020,  
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,  
for public access to document ST 11422/18 INIT**

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43) (hereafter "Regulation No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. On 4 March 2020 the applicant introduced an initial application for access to document ST 11422/2018 INIT, dated 25/07/2018, which is an opinion of the Council Legal Service intended for the Research Working Party and the Friends of the Presidency Group (European Defence Fund) on the legal bases of the Horizon Europe package of proposals.
2. The General Secretariat of the Council replied to this application on 24 March 2020 by granting partial access to the requested document (paragraphs 1 to 4). The General Secretariat grounded its decision on the exceptions to the right of access to documents relating to the protection of the institution's decision-making process (Article 4(3), first subparagraph, of Regulation 1049/2001) and the protection of the legal advice (Article 4(2), second indent, of Regulation 1049/2001).
3. In the confirmatory application dated 8 April 2020, the applicant asked the Council to reconsider this position, claiming that the General Secretariat had not adequately shown that disclosure would harm the decision-making process and the Council's interest in seeking and receiving legal advice. The applicant also contends that there is an overriding public interest in disclosure of the legal opinion, as it concerns a legislative procedure involving the application of EU budgetary funds, which is a topic of a high relevance for the general public.

4. The Council has re-assessed whether, in full consideration of the principles underlying Regulation (EC) No 1049/2001, in particular the aim of ensuring the widest possible public access to documents, and in light of the applicant's arguments, public access can be provided to document ST 11422/2018 INIT. In so doing, the Council has thoroughly examined the content of the document concerned by the request, taking due regard to the state of play of the file as well as to the applicant's arguments.
5. Having thoroughly examined the document concerned, the Council has come to the conclusion that there is an overriding public interest to grant full public access to the requested document.
6. The Council notes that the present positive decision is based on an individual analysis of the content of the requested document and the specific circumstances of the present case. It does under no circumstances constitute a precedent for the future, since each application shall be assessed and judged on its own merit, pursuant to the established practice of the Council.

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