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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents - Confirmatory application - 28/c/03/26
- Draft reply

Delegations will find attached a draft reply to confirmatory application No 28/c/03/26
(see 10052/26)

REPLY TO CONFIRMATORY APPLICATION 28/c/03/26

made by email on 2 June 2026 and registered on 3 June 2026

A. INTRODUCTION

The Council has considered the 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 and Annex II to the [Council's Rules of Procedure](#) and has come to the following conclusion:

1. On 19 March 2026, the applicant submitted a request for public access to “*all documents, communications and text messages (SMS, iMessage, WhatsApp, Signal or similar) exchanged by the Council, or its officials, with other EU institutions or agencies, with the governments and/or institutions of EU Member States and non-EU countries, citizens, and natural or legal persons, concerning sanctions applied by the United States of America to judges and prosecutors of the International Criminal Court established by the Rome Statute, as well as UN special rapporteurs*” and “*any intervention measures taken by the Council to protect individuals, whether citizens of the Union or not, who, in their capacity as public officials and in the performance of their duties, have been subject to sanctions or retaliatory measures by the United States of America*”; the request was registered the following day.
2. On 12 May 2026, the General Secretariat of the Council (GSC) replied to that request, giving full access to documents WK 15098/2024 INIT, WK 14210/2025 REV 6, WK 14774/2024 INIT, WK 8153/2025 INIT, but withholding documents and parts of documents contained in WK 5207/2026 INIT, WK 570/2026 INIT, WK 1474/2026 INIT, WK 14112/2025 INIT, WK 8959/2025 INIT, WK 2769/2025 INIT, WK 977/2025 REV 2, WK 2199/2025 INIT, WK 16330/2024 INIT, WK 15085/2024 INIT, WK 14446/2024 REV 1, WK 14446/2024 INIT, WK 14474/2024 INIT, WK 13800/2024 INIT, WK 9767/2024 INIT, WK 10658/2024 REV 2, WK 14967/2025 REV 1, WK 9119/2024 INIT, WK 9282/2024 REV 1, WK 8800/2025 REV 2, WK 17056/2025 INIT, WK 16012/2025, WK 13896/2025 REV 2, WK 7934/2025 INIT, WK 1620/2026 INIT, WK 3152/2026 INIT, 6761/26, 15131/25, 13459/25 and 9987/25 in order to

protect the public interest as regards international relations (Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001), part of them also in order to protect personal data (Article 4(1)(b) of Regulation (EC) No 1049/2001).

3. On 2 June 2026, the applicant submitted a confirmatory application, registered the following day, requesting the Council to review the GSC's decision, to assess the existence of further documents covered by the initial application and to give full access to all documents concerned, based on an overriding public interest in their public release.

B. ASSESSMENT OF THE APPLICATION UNDER REGULATION (EC) NO 1049/2001

4. Following the confirmatory application, the Council has reassessed the GSC's reply to the initial request, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and considering the applicant's comments.
5. The Council has not identified other documents that would fall within the scope of the request. After the reassessment of the documents or parts of documents identified as in scope of the request, the GSC confirms that their disclosure would undermine the **protection of international relations pursuant to the third indent of Article 4.1.a) of Regulation (EC) 1049/2001**.
6. In accordance with the established case-law of the Court of Justice, the public interest exceptions laid down in Article 4(1)(a) of Regulation (EC) No 1049/2001 are subject to a particular regime as compared to the other exceptions included in Article 4. The Council enjoys "*a wide discretion for the purpose of determining whether disclosure of a document to the public would undermine the interests protected by that provision*".¹ Consequently, once the Council has come to the conclusion that any release would indeed undermine the public interest in this area, it has no choice but to refuse access, because "*it is clear from the wording of Article 4(1)(a) of Regulation No 1049/2001 that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of*

¹ Judgments of 11 July 2018, *ClientEarth v Commission*, T-644/16, EU:T:2018:429, paragraph 25, and of 27 November 2019, *Izuzquiza and Semsrott v European Border and Coast Guard Agency (FRONTEX)*, T-31/18, EU:T:2019:815, paragraph 65

Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests”.² Therefore, the Council enjoys a wide discretion in assessing the impact of the release of a document on international relations and is not required from taking into account other legitimate interests in order to override the conclusion that giving access to a document or parts of a document would harm the protected interest.

7. For the purpose of the assessment of a request for access to documents under Regulation (EC) No 1049/2001, it is not required to establish the existence of a definite risk of undermining the protection of international relations, but merely the existence of a specific, actual, reasonably foreseeable and not purely hypothetical risk³ for which, as previously recalled, the institution enjoys a margin of discretion.
8. In this case, the documents contain internal discussions on the US sanctions on ICC members that in case of disclosure could have a negative impact in the EU external relations with the US. Due to the sensitivity of the topics addressed and the ongoing geopolitical situation, to ensure the preservation of mutual trust and the possibility to continue with this type of discussion forums, it is necessary to preserve the confidentiality of any details relating to the exchanges, except for those that are already public. Even the disclosure of the topics addressed in the discussions could negatively impact the international relations of the Union with the US. As a result, the exception contained in Article 4(1)(a) of Regulation No 1049/2001 (protection of international relations) applies to all the excerpts of the document identified as relevant to the request.
9. Additional and specific reasoning to deny disclosure of the different categories of documents can be found further below:

Interventions of high-level representatives of the ICC before the Council’s Working Group COJUR-ICC⁴:

10. Disclosing the content of the intervention of high-level representatives of the ICC before the Council Working Group Cojur-ICC would harm the EU relations with the US. The

² Judgment of 1 February 2007, *Sison v Council*, C-266/05, EU:C:2007:75, paragraph 46; and similarly, judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 38.

³ Judgment of 13 March 2024, *ClientEarth v Council*, T-682/21 and T-683/21, EU:T:2024:165, paragraph 118; and similarly judgment of 25 November 2020, *Bronckers v Commission*, T-166/19, EU:T:2020:557, paragraph 60.

⁴ WK 5207/2026 INIT, WK 570/2026 INIT, WK 1474/2026 INIT, WK 14112/2025 INIT, WK 8959/2025 INIT, WK 2769/2025 INIT, WK 977/2025 REV 2, WK 2199/2025 INIT, WK 16330/2024 INIT, WK 15085/2024 INIT,

discussions between the representatives of the ICC and the Council Working Group COJUR-ICC do not only include the state of play of the US sanctions and their impact on the ICC work but also the strategy put in place by the ICC to mitigate the consequences of US sanctions, and the potential EU response.

Drafts EU statements and potential EU positions not yet published⁵:

11. The documents contain drafts of EU statements that have never been published as the texts have never been agreed at the level of the Council Working Group Cojur-ICC. Although the drafts do not contain final conclusions or statements, they include considerations at the level of the Council Working Group Cojur-ICC that being disclosed could harm the EU relations with the US.

Discussions within COJUR⁶:

12. The extracts concern discussions in COJUR on how to protect the ICC against sanctions against it. The documents also include considerations on the legal analysis by the EEAS of measures taken by the US against members of the ICC. Disclosing these documents could harm the EU's relations with the US since they refer to potential actions the EU could take as a reaction to the US sanctions being imposed on the ICC.

Discussions within the Council⁷:

13. The documents contain exchanges and discussions between delegations of Member States on the US sanctions against members of the ICC. Disclosing these documents could harm the EU's relations with the US since they refer to potential actions the EU could take as a reaction to the US sanctions being imposed on the ICC.
14. Additionally, certain documents⁸ contain personal data of ICC members, university professors, members from trust funds for victims of the sanctions and members on NGOs that

WK 14446/2024 REV 1, WK 14446 2024 INIT, WK 14474/2024 INIT, WK 13800/2024 INIT, WK 9767/2024 INIT, WK 10658/2024 REV 2, WK 1474/2026 INIT.

⁵ WK 14967/2025 REV 1, WK 9119/2024 INIT, WK 9282/2024 REV 1, REV 2, UNGA 80

⁶ WK 17056/2025 INIT, WK 16012/2025, WK 13896/2025 REV 2, WK 7934/2025 INIT, WK 1620/2026 INIT, WK 3152/2026 INIT.

⁷ 6761/26, 15131/25, 13459/25, 9987/25.

⁸ WK 2199/2025 INIT, WK 977/2025 REV 2, 9987/25, WK 14967/2025 REV 1, WK 16330/2024 INIT, WK 13800/2024 INIT, WK 9767/2024 INIT, WK 9282/2024 REV 1, WK 10658/2024 REV 2.

are subject to protection under the exception in **Article 4.1.b) of Regulation (EC) 1049/2001 (protection of personal data)** as interpreted by the case law⁹. The Council considers that the two cumulative conditions for the transfer of personal data under Article 9(1)(b) of Regulation (EU) 2018/1725 are not fulfilled. First, no public interest in the disclosure of the names can be drawn from the initial request nor from the confirmatory application. According to the case law¹⁰, the absence of any indication of public interest by the requester does not allow the institution to undertake the balancing of interests included in the second condition set out in Article 9(1)(b) of Regulation (EU) 2018/1725. Second, in any case, it is considered that the disclosure of the names could potentially pose a risk for the participants who engaged in the discussions, especially the ICC members, and, therefore, should be subject of protection under the exception laid down in Article 4(1)(b) of Regulation (EC) 1049/2001.

Partial access

15. It has also been examined whether partial access could be granted to the documents or extract of documents requested, in accordance with Article 4(6) of Regulation (EC) No 1049/2001. The exception contained in Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 (protection of international relations) applies to almost the entirety of the documents and extracts of documents identified. Taking this under consideration, the information that remains accessible to the applicant is only the document headings and some parts of the cover pages which contain no relevant information. Therefore, it is considered that granting partial access is not possible.

C. CONCLUSION

For the reasons set out above, the Council concludes that access to the documents and extract of documents identified must be refused in its entirety on the grounds of Article 4(1)(a), third indent (protection of the public interest as regards international relations) and Article 4.1.b) (protection of personal data) of Regulation (EC) 1049/2001.

⁹ [T-39/17](#), *Port de Brest v Commission*, paragraphs 43, 44.

¹⁰ [T-506/21](#), *Hans-Wilhelm Saure v Commission*, paragraph 26, [C-127/13 P](#), *Guido Strack v Commission*, paragraph 110.