



Brussels, 10 September 2025
(OR. en)

12046/25

LIMITE

INF 127
API 67

NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents - Confirmatory Application - 15/c/01/25

Delegations will find attached a draft reply to confirmatory application No 15/c/01/25
(see 12044/25).

REPLY TO CONFIRMATORY APPLICATION 15/c/01/25
made by email on 30 July 2025 and registered on the same day

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 (hereafter, “Regulation (EC) No 1049/2001”) and Annex II to the [Council’s Rules of Procedure](#) and has come to the following conclusion:

1. On 25 June 2025, the Applicant, as a representative of an organisation, in turn acting on behalf of a specified client, submitted an initial request for access to Council documents 6886/25, 6887/25, 6889/25, 6889/1/25 REV 1, 6631/25, 8633/25, 9134/25, 9131/25, 9133/25 and 9480/25.
2. On 14 July 2025, the General Secretariat of the Council (GSC) replied to the Applicant, granting access to document 9480/25, only redacted for personal data, but withholding documents 9131/25, 9134/25, 9133/25, 6886/25, 6887/25, 8633/25, 6889/25 and 6889/1/25 REV 1 to protect the public interest as regards international relations and document 6631/25 to protect legal advice.
3. On 30 July 2025, the Applicant submitted the present confirmatory application, again acting on behalf of the specified client, limited to documents 9134/25, 6886/25, 6887/25, 8633/25, 6889/25 and 6889/1/25 REV 1. In support of his confirmatory application, the Applicant invokes the fact that the 18th package of restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine has in the meantime been adopted, while, in his view, “*the Council’s initial justification was solely based on the ongoing nature of the decision-making process*”. He refers to Article 4(3) of Regulation (EC) No 1049/2001, which he considers no longer applicable, and invokes an overriding public interest in release.

5. Furthermore, the Applicant argues that the requested documents should have been made public based on Article 11(4) and (5) of Annex II of the Council's Rules of Procedure. Notably, the applicant considers that the requested documents fall into the scope of the above-mentioned provisions of the Council's Rules of Procedure, in so far as they are related to draft legislative acts.

GENERAL PRESUMPTION OF NON-DISCLOSURE

6. First of all, it should be noted that the requested documents are in principle covered by a presumption that their disclosure would be harmful to the security of the Union or that of one or more of its Member States or the conduct of their international relations. Such presumption has been established by Article 4b of Decision 2014/145/CFSP and Article 16a of Regulation (EU) No 269/2014¹.
7. Nevertheless, in accordance with settled case-law of the Court of Justice², taking into account all circumstances of the case, the Council decided in the present case to carry out a specific and individual examination of the requested documents in view of their possible release and provide reasons.

THE APPLICABLE EXCEPTIONS

8. It needs to be recalled, at the outset, that while referring to the ongoing decision-making process at the time, in its initial reply, the GSC withheld the documents that are subject to the confirmatory application on the basis of Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001, i.e. the protection of the public interest as regards international relations, considering that the release of the documents would have weakened the international position of the European Union and undermined the effectiveness of the restrictive measures to be adopted.
9. However, in his confirmatory application, the Applicant seems to argue that the Council refused access to the documents on the basis of Article 4 (3) of Regulation (EC) No 1049/2001, i.e. the protection of the ongoing decision-making process. According to the

¹ Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 78, pp. 16–21 and Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine OJ L 78, 17.3.2014, pp. 6–15.

² See Judgment of 22 January 2020, C-175/18 P, PTC Therapeutics International Ltd v European Medicines Agency (EMA), EU:C:2020:23, paragraph 60 and 61 and *Judgment of 14 November 2013, C-514/11 P and C-605/11 P, LPN and Finland v Commission, EU:C:2013:738, paragraph 67.*

applicant, the decision-making process being now completed, the Council should grant access to the documents.

10. Nevertheless, as the reasoning developed by the Applicant exclusively concerns Article 4(3) of Regulation (EC) No 1049/2001, which the GSC did not invoke in the initial phase and which the Council still does not rely on in the present confirmatory phase, his arguments are not operative in this regard. However, the adoption of the legal acts which the requested documents concern, like any material change in circumstances, does warrant a fresh assessment whether Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 continues to apply.
11. The Council therefore has proceeded to a new assessment, based on present circumstances, concerning the possible release of the documents subject to the confirmatory application.
12. The Council considers that most of the requested documents continue to come within the remit of Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001. In addition, the Council considers that some of the requested documents come partially within the remit of Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of the privacy and the integrity of the individual) and Article 4(2), first indent, of Regulation (EC) No 1049/2001 (protection of commercial interests).
13. As regards Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001, the Council recalls that, 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.
14. On the one hand, *“in respect of the public interest exceptions provided for in Article 4(1)(a)”* of Regulation (EC) No 1049/2001, the Council must be recognised as *“enjoying a wide discretion for the purpose of determining whether disclosure of a document to the public would undermine the interests protected by that provision”*.³
15. On the other hand, once the Council has come to the conclusion that 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*

³ 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.

*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 Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests”.*⁴

16. Therefore, while the Council enjoys a wide discretion in assessing the impact of the release of documents focused on international relations, it is barred from taking into account other legitimate interests that might override the conclusion that giving access to a document or parts of a document would harm the abovementioned protected interest.
17. In addition, according to settled case-law, the risk of negative repercussions which disclosure of documents might entail for the EU relations with third countries justifies the use of the exception under Article 4(1)(a), third indent of Regulation (EC) No 1049/2001⁵. Moreover, the way in which the authorities of a third country perceive the decisions of the EU is a component of the relations established with that third country, as “*the pursuit and the quality of those relations depend on that perception*”. This may therefore warrant the application of the exception concerned.⁶
18. Besides, 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 the European Union’s international relations, but merely the existence of a reasonably foreseeable and not purely hypothetical risk⁷ for which, as previously recalled, the institution enjoys a margin of discretion.
19. It also results from the above that the Council has no choice but to refuse access to a document that falls within the scope of the abovementioned exception, the public disclosure of which would undermine the public interests protected by it.
20. As regards Article 4(1)(b) of Regulation (EC) No 1049/2001 (protection of the privacy and the integrity of the individual), in accordance with established case-law, the transmission of personal data in the context of a public access request requires, as a precondition, that the

⁴ Judgment of 1 February 2007, *Sison v. Council*, C-266/05 P, ECLI:EU:C:2007:75, paragraph 46; and similarly judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, ECLI:EU:T:2018:69, paragraph 38.

⁵ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 41.

⁶ Judgment of 27 February 2018, *CEE Bankwatch Network v Commission*, T-307/16, paragraphs 89-90.

⁷ Judgment of 25 November 2020, *Bronckers v Commission*, T-166/19, EU:T:2020:557, paragraph 60.

Applicant demonstrates its necessity for a specific purpose in the public interest, by derogation to the principle underlying Article 6(1) of Regulation (EC) No 1049/2001, pursuant to which there is no obligation of motivating an application. According to the case-law, the applicant must first demonstrate that the transmission of personal data is necessary for a specific public interest purpose. It is only if that demonstration is made that it is then for the institution concerned to verify whether there is any reason to believe that the transmission at issue might adversely affect the data subject's legitimate interests and, in such a case, to weigh up, in a verifiable manner, the various competing interests with a view to assessing the proportionality of the transmission of personal data sought.⁸

21. Lastly, Article 4(2), first indent of Regulation 1049/2001 (protection of commercial interests of a natural or legal person), provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] commercial interests of a natural or legal person, including intellectual property, [...] unless there is an overriding public interest in disclosure”. The Court has considered that, in order for the exception in question to apply, the institution is not required to establish that there is a definite risk of undermining the protection of the commercial interests of the legal entities concerned. According to the Court, it is sufficient for the institution “to indicate tangible elements which would allow the conclusion to be drawn that the risk of the commercial interests of the undertaking concerned would be undermined was [...] reasonably foreseeable and not purely hypothetical, and to mention the existence [...] of objective reasons on the basis of which it could be reasonably foreseen that those commercial interests would be undermined if the information requested by the applicants were disclosed”⁹.
22. Based on these criteria, the Council comes to the conclusion that most of the documents covered by the confirmatory application cannot be released (some fully, some partially), for the reasons set out below.
23. The requested documents, documents 9134/25, 6886/25, 6887/25, 8633/25, 6889/25 and 6889/1/25 REV 1, are preparatory documents for the 18th package of restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

⁸ Judgment of 6 April 2022, *Hans-Wilhelm Saure v European Commission*, T-506/21, paragraph 25

⁹ Judgment of 17 July 2024, *Auken, Metz, Paulus and van Sparrentak v European Commission*, T-689/21, EU:T:2024:476, paragraph 82 and 83.

Documents 6886/25 and 6887/25

24. Document 6886/25 is a working document of 7 March 2025 from the Presidency to delegations, containing a draft text for a Decision amending Decision 2014/145/CFSP.
25. Document 6887/25 is a working document of 7 March 2025 from the Presidency to delegations, containing a draft text for an Implementing Regulation implementing Regulation (EU) No 269/2014.
26. Restrictive measures are by their very nature decisions that are regularly reviewed and adapted to evolving circumstances. Disclosure of texts that differ from the final text of the Council Decision and Regulation adopted carries the risk of weakening the application both of the adopted package and of foreseeable future packages. Indeed, revealing elements that have not been included or that have been modified in the final text reflect the possibility that the Council Decision and Regulation could also have been different in some regard, opening up avenues for hostile third parties to try to avert future restrictive measures. This would deprive the restrictive measures of their *effet utile*, and, as a consequence, would harm the international relations of the EU. This is the specific, actual, reasonably foreseeable and not purely hypothetical risk that disclosure of the above-mentioned documents would pose to the protected interest of international relations.
27. Upon examination of the two above-mentioned documents, the Council has to conclude that these considerations do apply in this case.
28. The Council therefore considers that these two documents must be withheld, based on Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

Documents 9134/25 and 8633/25

29. Document 9134/25 is a note of 27 June 2025 from the GSC to the Permanent Representatives Committee (Coreper) concerning the adoption of the 18th package.
30. Document 8633/25 is a I/A item note of 13 May 2025 from the GSC to Coreper and Council concerning the adoption of that package.
31. Certain parts of document 9134/25 reflect internal discussions within the Council. Disclosure of such internal discussions carries the risk of weakening the application both of the adopted package and of foreseeable future packages. This would deprive the restrictive measures of their *effet utile*, and, as a consequence, would harm the international relations of the EU. This is the specific, actual, reasonably foreseeable and not purely hypothetical risk that disclosure of the above-mentioned document would pose to the protected interest of international relations. These parts of the document therefore need to be withheld.
32. The Council has come to the conclusion that document 8633/25 and the remaining parts of document 9134/25 can now be disclosed.

Documents 6889/25 and 6889/1/25 REV 1

33. Documents 6889/25 and 6889/1/25 REV 1 are two versions (of 7 and 12 March 2025, respectively) of a note from the GSC to delegations on the adoption of that package.
34. Annex I of these documents contains detailed sensitive information on specific individuals and entities which were considered for restrictive measures, in the form of letters to them or their counsel. Public release of this information would reveal sensitive information concerning the reasons behind the listing of individuals and entities. Revealing such information would weaken the efficiency of the restrictive measures adopted and future restrictive measures. This would harm the international relations of the EU (protection of the public interest as regards international relations). In addition, such release would clearly and seriously affect the privacy and integrity of the natural persons concerned (protection of the privacy and the integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data under Article 4(1)(b) of Regulation (EC) No 1049/2001. Considering that the applicant has not demonstrated that the transmission of the

relevant personal data is necessary for a specific public interest purpose, the Council has concluded that disclosure of the personal data contained in would undermine the protection of privacy and the integrity of the identified individuals and legal persons. Furthermore, the release of the information contained in Annex I, in so far as it would reveal commercially sensitive information, entails the reasonably foreseeable and not purely hypothetical risk to undermine the commercial interests of the legal persons concerned (protection of commercial interests under Article 4(2), first indent, of Regulation (EC) No 1049/2001). The Council does not see an overriding public interest in release of this specific detailed information, even when acknowledging an important interest of the public to know about the restrictive measures regime of the Union.

35. In addition, points 4 and 5 of document 6889/25 allow to draw conclusions on internal discussions to which the same considerations apply as set out above in relation to document 9134/25. These parts of the document therefore also need to be withheld.
36. The Council has come to the conclusion that the remaining parts of these two documents can now be disclosed.

The Applicant's arguments regarding the Council's Rules of Procedure

37. The Applicant argues that the requested documents should have been made public based on Article 11 (4) and (5) of Annex II of the Council's Rules of Procedure (CRP). The Applicant bases his argument on the assumption that the requested documents are related to the adoption of legislative acts.
38. Notably, the applicant argues that the requested documents fall within the scope of Article 11(5) (b) and (c) and Article 11(4)(b) of Annex II of the CRP, in as much as they are documents submitted by Coreper to Council as part of a legislative process relating to the adoption of legally binding acts, I/A item notes related to draft legislative acts or draft legislative acts, and documents discussed within one of the Council's preparatory body, respectively.

40. In this regard, first, Article 11 of Annex II of the CRP establishes a legal framework for the proactive publication of documents by the General Secretariat of the Council. It is a separate regime than the one foreseen by Regulation (EU) 1049/2001 which regulates access to documents of the institutions following an application by the public and in the framework of which the present confirmatory application has been filed. This confirmatory application is therefore not the legitimate framework to challenge the application of the above-mentioned Articles of the CRP.
41. Second, it needs in any case to be clarified that the legal acts to which the requested document relate cannot be considered as legislative acts within the meaning of the CRP and, more broadly, of the Treaties. In accordance with Article 289(3) TFEU and with well-established case-law of the Court of Justice, “legislative acts” are those legal acts that have been adopted on the basis of a provision of the Treaties which expressly refers either to the ordinary legislative procedure or the special legislative procedure¹⁰.
42. This is not the case for the legal acts to which the requested documents pertain, which are not legislative acts. Council Decision (CFSP) 2025/1476 of 18 July 2025 amending Decision 2014/145 CFSP and Council Implementing Regulation (EU) 2025/1476 of 18 July 2025 implementing Regulation (EU) No 269/2014 are based on Article 29 TEU and Article 215 TFEU¹¹, respectively, which do not refer to the ordinary legislative procedure nor to the special legislative procedure.

PARTIAL ACCESS

43. The Council has thoroughly verified the possibilities for partial access to the requested documents and has decided to grant partial access to documents 9134/25, 6889/25 and 6889/1/25 REV 1 as outlined above and below. All parts of the documents not released as noted above and below are covered by the exceptions set out above.

¹⁰ See Article 289(3) TFEU, which states ‘*Legal acts adopted by legislative procedure shall constitute legislative acts.*’ See also judgment of 6 September 2017, joined cases C-643/15 and C-647/15, Slovak Republic and Hungary v Council, EU:C:2017:631, paragraphs 58 to 63.

¹¹ Council Implementing Regulation (EU) 2025/1476 of 18 July 2025 is formally based on Regulation (EU) No 269/2014, which has as legal basis Article 215 TFEU.

CONCLUSION

44. Therefore, the Applicant may not have access to documents 6886/25 and 6887/25.
 45. The Applicant may have access to document 8633/25.
 46. The Applicant may have access to document 9134/25, with the exception of point 2, the second sentence of point 3, point 5 and the mentions concerning the date in the first paragraph of page 5 and in the last paragraph of page 11.
 47. The Applicant may have access to documents 6889/25 and 6889/1/25 REV 1, with the exception of Annex I of each of them and of points 4 and 5 of document 6889/25.
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