



Council of the  
European Union

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**NOTE**

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From: General Secretariat of the Council

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To: Delegations

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No. prev. doc.: 14704/23

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Subject: Public access to documents  
- Confirmatory application No 35/c/01/23

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Delegations will find attached a draft reply to confirmatory application No 35/c/01/23  
(see 14704/23).

**REPLY TO CONFIRMATORY APPLICATION 35/c/01/23**  
**made by email on 25 October 2023 and registered on the same day**

Following this confirmatory application, the Council has considered the possibility to grant access to the document requested thereby, in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001<sup>1</sup> and Annex II to the Council's Rules of Procedure<sup>2</sup>, and has come to the following conclusion:

1. Further to the initial request for public access to documents concerning the 54th meeting of the Association Council between the European Union and Türkiye held on 15 March 2019, on 18 October 2023 the General Secretariat of the Council (GSC) provided full access to twelve documents, partial access to one document, and refused to grant access to document **ST 4804/19** (containing Türkiye's position at that meeting), since its disclosure would cause prejudice to the public interest as regards international relations (Art. 4(1)(a), third indent, of Regulation (EC) No. 1049/2001).
2. On 25 October 2023, the Applicant submitted a confirmatory application asking the Council to review its position concerning document **ST 4804/19**, arguing that disclosure would not prejudice the relationship between the EU and Türkiye.
3. The Council has re-assessed, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and in the light of the Applicant's comments, whether full or partial public access can be provided to the requested document.

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<sup>1</sup> OJ L 145, 31.5.2001, p. 43.

<sup>2</sup> Council Decision 2009/937/EU (OJ L 325, 11.12.2009, p. 35).

## **THE REQUESTED DOCUMENT**

4. Document **ST 4804/19** is a Note containing the position of Türkiye tabled on the occasion of the 54th meeting of the EU- Türkiye Association Council<sup>3</sup> held in Brussels on 15 March 2019.
5. At that meeting<sup>4</sup>, the EU- Türkiye Association Council took stock of the accession strategy, in particular in the light of the Commission's 2018 report on Türkiye<sup>5</sup> and the General Affairs Council conclusions of 26 June 2018.<sup>6</sup>
6. From the outset, it should be underlined that document **ST 4804/19** has not been issued in the context of the Council's legislative activity. Indeed, the requested document relates to the Union's international relations, an area for which the Court recognised that different standards apply as regards access to documents than in relation to the legislative activity of a Union institution. It is against this background that the present request ought to be examined.

## **ASSESSMENT OF THE REQUESTED DOCUMENT UNDER REGULATION (EC)**

### **No 1049/2001**

7. 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.
8. 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*".<sup>7</sup>

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<sup>3</sup> Bilateral body established in line with Article 6 of the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12 September 1963 (OJ L 361 of 31.12.1977).

<sup>4</sup> <https://www.consilium.europa.eu/en/meetings/international-ministerial-meetings/2019/03/15/>

<sup>5</sup> See doc. ST 8080/19, downloadable from the public register of Council documents.

<sup>6</sup> See doc. ST 10555/18, downloadable from the public register of Council documents.

<sup>7</sup> 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.

9. 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 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*”.<sup>8</sup>
10. Therefore, while the Council enjoys a wide discretion in assessing the impact of the release of documents on international relations, when it concludes that the disclosure of a document would prejudice the public interest as regards international relations, it is barred from taking into account other legitimate interests.
11. 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 rather the existence of a reasonably foreseeable and not purely hypothetical risk<sup>9</sup> for which, as previously recalled, the institution enjoys a margin of discretion.
12. 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 them.
13. As indicated in point 4 above, the requested document originates from the government of Türkiye and contains information it had shared on its position at the abovementioned Association Council meeting.

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<sup>8</sup> 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.

<sup>9</sup> Judgment of 25 November 2020, *Bronckers v Commission*, T-166/19, EU:T:2020:557, paragraph 60.

14. The authorities of Türkiye, consulted hence in line with Article 4(4) of Regulation (EC) No 1049/2001, informed the Council that, in accordance with their established procedure, they do not deem appropriate to make their national position accessible for third parties.
15. In the light of the above, and having thoroughly examined the contents of the requested document, the Council is of the opinion that its public disclosure would cause prejudice to the EU's relations with Türkiye and jeopardize the climate of confidence established within the bilateral Association Council among the parties involved in its proceedings, who trust that sensitive information shared on a confidential basis would not be disclosed. This would have negative consequences for future international dialogues and contacts between the EU and Türkiye, even more considering the current geopolitical international challenges.
16. The Council is not in a position to describe in more detail the harm that would be caused by the release of the requested document, as this would necessarily entail disclosure of part of the very information that is protected by the exception concerning international relations. The same is true for a comparison with other documents requested by the Applicant and to which full or partial access has been granted in the General Secretariat's reply to the initial request introduced by the Applicant.
17. In this regard, it also needs to be noted that documents must be analysed on a case-by-case basis, and the fact that the Council or its General Secretariat has come to different conclusions for document **ST 4804/19** than the other documents requested in the initial application filled by the applicant only underlines that the Council takes its transparency obligations very seriously and does not have a blanket approach to the matter concerned. After a careful analysis, it concluded that the other documents requested by the Applicant, to which access had been granted (in full to twelve documents and partially to one) are not of the same kind as the document in question here, since their release would not bring prejudice to the public interest as regards international relations.

18. In the light of the above, the Council considers that releasing document **ST 4804/19** to the public would cause prejudice to the relations between the EU's and Türkiye, as it would reveal elements which are sensitive for Türkiye and for its relationship with the EU. This would undermine trust among the negotiating parts weakening the EU position in the international framework.<sup>10</sup>
19. In the confirmatory application, for the first time, the Applicant requests to learn the reasoning provided by the authorities of Türkiye concerning the disclosure. A confirmatory application can only be intended to reviewing the initial reply of the Council and cannot be aimed at asking for additional information, not requested in the initial phase. For such reason, such request cannot be considered.
20. The Council has also looked into the possibility of releasing parts of the document in line with Article 4(6) of Regulation (EC) No 1049/2001. However, the Council has found that the abovementioned exception applies to its entire content and therefore it is of the opinion that it is not possible to grant partial access without compromising the protected interest referred to above.

## **CONCLUSION**

21. For the reasons set out above, the Council concludes that access to document **ST 4804/19** must be refused in its entirety on the ground of Article 4(1)(a), third indent of the abovementioned Regulation.

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<sup>10</sup> Article 4(1)(a), third indent of Regulation (EC) No 1049/2001.