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NOTE

From: General Secretariat of the Council

To: Delegations

No. prev. doc.: 15241/22

Subject: Public access to documents
- Confirmatory application No 20/c/01/22

Delegations will find attached a draft reply to confirmatory application No 20/c/01/22
(see 15241/22).

**REPLY TO CONFIRMATORY APPLICATION 20/c/01/22,
made by email on 22 November 2022 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 2001¹ and Annex II to the Council's Rules of Procedure², and has come to the following conclusion:

1. On 6 October 2022, the Applicant requested access to document 12904/22 – an opinion of the Council Legal Service (“CLS”) dated 27 September 2022 and analysing certain procedural aspects related to the handling in the Council of the Commission's Proposal for an Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary.
2. The General Secretariat of the Council (“GSC”) replied to this request on 11 November 2022 providing partial access to two paragraphs of the legal opinion in question. It explained that the measures which are subject of the proposed act were susceptible to have serious economic consequences for the Member State concerned, as well as for the Union as whole. Therefore, according to the GSC, full disclosure of the opinion would create a reasonably foreseeable risk of undermining the public interest as regards the economic policy of the Union and of the Member State in question in accordance with Article 4(1)(a), fourth indent, of Regulation (EC) No 1049/2001.
3. Furthermore, in its decision, the GSC invoked the exception provided under Article 4(3), first subparagraph of Regulation (EC) No 1049/2001 considering that, since the decision-making process related to the requested opinion was still ongoing, full disclosure of the opinion would create a non-hypothetical risk of external pressure and interference, which would seriously undermine the institution's decision-making process.

¹ OJ L 145, 31.5.2001, p. 43.

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

4. Finally, the GSC considered that full disclosure of the requested opinion would undermine the protection of legal advice and of court proceedings. It thus concluded that the matter fell within the scope of the exception provided under Article 4(2), second indent, of Regulation (EC) No 1049/2001.
5. On 22 November 2022, the Applicant made a confirmatory application. The Applicant clarified that the opinion was requested for research purposes in the context of a study commissioned by the European Parliament's Budget Committee with the aim of interpreting how to better protect the Union's budget and financial interests. Therefore, according to the Applicant, risks related to the protection of the economic policy of the Union and the Member States were mitigated by the fact that the project was under the control of the European Parliament, which has among its objectives the protection of the economic policy of the Union and the Member States. The applicant also proposed that a non-disclosure agreement be adopted if necessary.
6. The Council has carefully considered the confirmatory application. It has re-assessed, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and on account of the Applicant's arguments, whether public access can be provided to all or further parts of the requested document.

CONTEXT OF THE REQUESTED DOCUMENT

7. Document 12904/22, which is the object of the present confirmatory application, contains a written opinion of the CLS from 27 September 2022. This opinion was issued in the context of the examination by the Council preparatory bodies, of the Commission's proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary ("the Proposal")³.

³ Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary (COM/2022/485 final)

8. The Proposal is based on Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (“Conditionality Regulation”)⁴. More specifically, the Proposal implements Article 4(1) of the Conditionality Regulation which provides that *“appropriate measures shall be taken where it is established in accordance with Article 6 that breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way”*.
9. Following long and detailed exchanges between the Commission and the Hungarian authorities, the Commission reached the conclusion that it had found irregularities of a systemic and recurring nature which justified the adoption of appropriate measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary.
10. The Proposal, which was issued on 18 September 2022, represents the first instance where the Commission relies on the procedure laid down in Article 6 of the Conditionality Regulation. In its proposal, the Commission suggests suspending 65% of the budgetary commitments for three operational programmes under the Union’s Cohesion Policy.
11. When called upon to examine the proposal, the Budget Committee, asked the CLS to clarify a number of important procedural aspects relating to the handling of the proposal by the Council and its preparatory bodies. The requested document contains the written opinion issued by the CLS to address these questions.
12. Since the publication of the proposal on 18 September 2022, the Commission has been called upon to provide a revision its assessment in light of the remedial measures adopted by Hungary in order to enable the Council to assess the proposal’s compatibility with the principle of proportionality. On the 9th of December 2022, the Commission transmitted to the Council its re-assessment.

⁴ OJ L 145, 31.5.2001, p. 43.

LEVEL OF TRANSPARENCY APPLICABLE TO THE REQUESTED DOCUMENT

13. From the outset, it is worth noting that the requested document was issued in the context of a decision-making procedure of a non-legislative nature.
14. Indeed, the Council is not acting in its legislative capacity when examining a Commission proposal adopted on the basis of the Conditionality Regulation for the purpose of implementing measures for the protection of the Union budget. As was confirmed by the Court of Justice, the measures that may be adopted by the Council pursuant to Article 6 of the Conditionality Regulation are implementing decisions in the sense of Article 291(2) TFEU.⁵ Thus, in the procedure in question, the Council acts on the basis of implementing powers, and not as Union legislator.
15. In that regard, it must be underlined that both the Treaty on the European Union (Article 16(8)) and the Treaty on the Functioning of the European Union (Article 15(2) and (3)) make a distinction between legislative and non-legislative activities as regards the application of transparency rules, with particular emphasis on transparency in the context of legislative activities.
16. It follows that, since they are not of a legislative nature, the documents issued during the examination of the Commission's proposal, including the requested document, do not benefit from the wider access presumption which is referred to in recital 6 of Regulation (EC) No 1049/2001.
17. The grounds of the confirmatory application must be examined in light of those considerations.

⁵ Judgments of the Court of Justice of 16 February 2022 in cases C-156/21 *Hungary v European Parliament and Council*, EU:C:2022:97, paragraph 188

THE GROUNDS OF THE CONFIRMATORY APPLICATION

18. The Council contends that the paragraphs of the requested document which have not been disclosed to the public fall within the scope of Articles 4(1)(a) fourth indent, 4(2), second indent, and 4(3) second subparagraph of Regulation (EC) No 1049/2001. The applicability of these three grounds will be addressed in turn.
19. To the extent that the applicant's arguments put forward in the present confirmatory application relate to Article 4(1)(a) fourth indent, and 4(3) of Regulation (EC) No 1049/2001, they will be addressed in the context of the Council's statement of reasons relating to these two exceptions. In that regard, the Council notes that the applicant did not provide specific arguments relating to the protection of legal advice and court proceedings under Article 4(2) second indent of Regulation (EC) No 1049/2001.

I. Article 4(1)(a) fourth indent of Regulation (EC) No 1049/2001

20. The Council contends that the paragraphs of the requested document which have not yet been disclosed to the public, fall within the scope of the exception protecting the public interest as regards the "*financial, monetary or economic policy of the [Union] or a Member State*".
21. In relation to this exception, the applicant argues that, in essence, the risk of undermining the interest protected under 4(1)(a) fourth indent of Regulation (EC) 1049/2001 can be mitigated since the requested document would be solely used for the purpose of conducting research performed at the request of the European Parliament BUDG Committee, and that all the information included in this project would be controlled by the European Parliament. Furthermore, the applicant underlines that the European Parliament's objective is also the protection of the economic policy of the Union and its Member States. In addition, the applicant suggests that a non-disclosure agreement is signed if necessary.
22. The Council will demonstrate that pursuant to Article 4(1)(a) fourth indent of Regulation (EC) No 1049/2001 it is under an obligation to refuse access to the requested document and that the arguments put forward by the applicant cannot, in any event, alter this conclusion.

23. At the outset, it is worth recalling 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.
24. Firstly, the Court held that: "*the Council must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions relating to the public interest provided for in Article 4(1)(a) of Regulation (EC) No 1049/2001 could undermine the public interest*"⁶. It follows from this that the Council's enjoys a wide margin of appreciation in determining whether full disclosure of the requested document would undermine the economic policy of the Union or of a Member State.
25. Secondly, it must be recalled that once the Council has come to the conclusion that the disclosure of a particular document would indeed undermine the public interest in this area, it has no choice but to refuse access. In that vein the Court held that; "*it is clear from the wording of Article 4(1)(a) of Regulation (EC) 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*"⁷.

⁶ Judgment of the Court of Justice of 1 February 2007 in case C-266/05 P, *Sison v Council*, paragraph 34, EU:C:2007:75.

⁷ Judgment of the Court of Justice of 1 February 2007 in case C-266/05 P, *Sison v Council*, paragraph 46, EU:C:2007:75.

26. At this stage, it is worth considering the applicant's suggestion that, due to reasons relating to the context in which the request was made (the performance of a study for the European Parliament) the risk to undermine the economic policy of the Union or of a Member State would be "mitigated". Firstly, the Council notes that the applicant does not call into question the existence of such risks. Indeed, since the applicant suggests that said risks can be mitigated, this seems to indicate that the applicant concurs with the Council that the risks in question are genuine. Secondly, in light of the considerations set out above, even if the Council was to consider, as the applicant suggest, that such risk could be reduced or mitigated, the fact remains that the Council is bound, by law, to refuse access to document which could undermine the economic policy of the Union or of a Member State.
27. In addition, regarding the applicant's suggestion to sign a non-disclosure agreement to mitigate the risks associated with the full disclosure of the requested document, presumably because it would restrict its further dissemination, the Council must, respectfully, reject this suggestion. Indeed, it is settled case-law that the disclosure of a document following an access request introduced pursuant to Regulation (EC) No 1049/2001 acquires an *erga omnes* effect, which denies to the institution the possibility to object to this document being communicated to other applicants or to allowing any person to have access to it.⁸ Therefore, the signature of a non-disclosure agreement could not, in any event, prevent the further circulation in the public domain of the requested document if it was disclosed pursuant to Regulation (EC) No 1049/2001.
28. Concerning the risk of undermining the economic policy of the Union or of a Member State and taking due account of the fact that the applicant did not challenge the existence of such risks, the Council confirms its assessment made in reply to the applicant's initial application.

⁸ Judgment of the General Court of 21 October 2010 in case T-439/08, *Agapiou Joséphidès v Commission and EACEA*, paragraph 116, EU:T:2010:442.

29. The Council submits that the measures for the protection of the Union budget, which are adopted on the basis of the Conditionality Regulation, are aimed at protecting the Union's financial interests. In the procedure at hand, both the risks for the Union's financial interests underlined by the Commission in the Proposal and the measures to alleviate these risks, are of such a magnitude which necessarily entails serious and far-reaching economic consequences for the Union. Similarly, the suspension of a substantial share of the Union's budgetary commitments under several operational programs of the Cohesion policy to Hungary, also entails profound and serious economic consequences.
30. To the extent that the requested document concerns the procedural rules governing the examination of the proposed measures, and in doing so, provide essential guidance to the Council and its preparatory bodies, in relation to the legality of the examination and adoption of the Commission's proposal, the Council confirms that full disclosure of the requested document would create a reasonably foreseeable risk of undermining the public interest as regards the economic policy of the Union and of the Member State in question, and would therefore be liable to undermine the public interest protected under Article 4(1)(a) fourth indent of Regulation (EC) No 1019/2001.

II. Article 4(2) second indent of Regulation (EC) No 1049/2001

31. The Council contends that the paragraphs of the requested document, which have not yet been disclosed to the public, fall within the scope of the exception protecting legal advice and court proceedings, under Article 4(2) second indent of Regulation (EC) No 1049/2001. This provision reads: "*The institutions shall refuse access to a document where disclosure would undermine the protection of (...) court proceedings and legal advice*".
32. The Council notes that the applicant did not call into question the applicability of this exception to the requested document in the present confirmatory application.

33. As has been held by the Court, the examination of the applicability of this exception “*must necessarily be carried out in three stages, corresponding to the three criteria in that provision*”.⁹ In other words, the Council must determine, firstly, whether the requested contains legal advice, secondly, whether disclosure of the document would undermine its ability to receive frank, objective and comprehensive legal advice, and thirdly, whether there is an overriding public interest in disclosure. The Council will address the third and final stage of this examination in a separate section (see Section V below).
34. Firstly, the Council submits that the requested document contains legal advice. This point is not particularly controversial. Indeed, the requested opinion was drafted by the Legal Service of the Council, and it addresses complex legal issues related to the implementation of the Conditionality Regulation within the Council. Therefore, the requested document does clearly contain legal advice.
35. Secondly, full disclosure of the requested document would risk undermining the Council’s ability to receive frank, objective and comprehensive legal advice from its Legal Service. In that regard, the Council will demonstrate that the legal advice contained therein is “*of a particularly sensitive nature*” and has a “*particularly wide scope*” that goes beyond the remits of the procedure in the context of which it was issued, which justifies the refusal to grant access to it, in line with the Court’s case-law.¹⁰

⁹ Judgment of the Court of Justice of 1 July 2008 in cases C-39/05 P and C-52/05 P, *Sweden & Turco v Council*, paragraph 37, EU:C:2008:374.

¹⁰ Judgment of the Court of Justice of 1 July 2008 in case C-39/05 P and C-52/05 P, *Sweden & Turco v Council*, paragraph 69, EU:C:2008:374.

36. Concerning the scope of the legal advice, the requested document touches upon issues of a systemic nature, which includes a detailed analysis of the applicable rules and procedures governing the deliberations and examination by the Council and its preparatory bodies of the Commission's proposal. In that sense, the requested opinion contains legal advice which is not only relevant for the purpose of this specific proposal, as it would be applicable to the handling of any similar proposal containing measures for the protection of the Union budget that the Commission may decide to put forward on the basis of the Conditionality Regulation. Furthermore, parts of the assessment provided by the CLS, which interprets provisions under the Treaties and the Council's Rules of Procedure, transcends the remits of the Conditionality Regulation as they relate to more generally applicable considerations in relation to the Council's decision-making process, and can be applied by analogy to a wide range of other files.
37. Concerning the sensitivity of the legal advice, the Council submits that the issues addressed in the requested document are highly contentious and of critical importance for the implementation of the Conditionality Regulation by the Council. It is worth noting that Members of the Council have expressed very different positions on the issues covered in the opinion. Indeed, the Conditionality Regulation itself has been the object of two actions for annulment before the Court,¹¹ which goes to illustrate the political and legal tensions surrounding the protection of the Union's financial interest. Unsurprisingly, the implementation of the Conditionality Regulation is raising political and legal tensions of a similar nature. In that regard, the risk of future litigation in relation to the Commission proposal must be considered as high – as illustrated by the recent judicial history of the Conditionality Regulation and the contentious nature of the issues discussed. In the same vein, it is worth noting that those issues are novel, as it is the first time that measures adopted on the basis of the Conditionality Regulation are examined by the Council. While the Court of Justice already had the opportunity to rule on the legality of the Conditionality Regulation, it has so far, not ruled on the implementation of measures adopted on its basis.

¹¹ Judgments of the Court of Justice of 16 February 2022 in cases C-156/21 *Hungary v European Parliament and Council*, EU:C:2022:97 and C-157/21 *Poland v European Parliament and Council*, EU:C:2022:98.

Should the high risk of litigation underlined above materialise, the way in which the Council examines, deliberates and takes a decision on the Commission's proposal, will come under the scrutiny of the Union's jurisdiction. In that sense, full disclosure of the legal advice, which specifically addresses those issues, would undermine the ability of the Council's to effectively defend itself in such proceedings.

38. Moreover, the possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, it could deter the members of the Legal Service from expressing opinions on legal issues with the requested clarity in particular as regards files characterised by a high risk of litigation, which in turn, could affect the way in which legal advice is drafted. This could also lead to opting for merely oral advice in such cases, to the detriment of its quality and contribution to the decision-making process.
39. In addition to the exception protecting legal advice, for the reasons set out above, describing the reasonably foreseeable risk of litigation, the Council submits that the parts of the requested document which have not been made public also fall under the scope of the exception on the protection of court proceedings (Article 4(2) second indent of Regulation (EC) No 1049/2001).
40. While the Council does not dispute that the requested document was not drawn up for the purposes of specific court proceedings, it must be recalled that that Court held that this exception has a wider scope. Indeed, the Court held that "*the need to ensure equality of arms before a court justifies the protection not only of documents drawn up solely for the purposes of specific court proceeding*". Indeed, as the Court pointed out; "*it does not follow from the case-law [...] that other documents are to be excluded, should the case arise, from the scope of the exception relating to the protection of court proceedings. Indeed, it can be seen from that case-law that the principles of equality of arms and the sound administration of justice are at the heart of that exception*"¹².

¹² Judgment of the General Court of 15 September 2016 in case T-18/15 *Philip Morris v Commission*, paragraph 64, EU:T:2016:487.

41. Considering the above, the Council submits that full disclosure of the requested document would compromise equality of arms in reasonably foreseeable court proceedings and would run counter the interest of the institution in seeking legal advice and receiving frank, objective and comprehensive advice.
42. For these reasons, the Council concludes that full access to the requested document must also be refused on the basis of Article 4(2) second indent of Regulation (EC) No 1049/2001, in relation to the protection of court proceedings and legal advice.

III. Article 4(3) second subparagraph of Regulation (EC) No 1049/2001

43. The Council does not contest, as the applicant correctly alludes to in the confirmatory application, that the procedure in the context of which the requested document was issued, has ended. In that regard, the Council does not dispute the fact that this change of circumstances excludes the requested document from the scope of application of Article 4(3) first subparagraph of Regulation (EC) No 1049/2001, on which the GSC has relied upon to refuse access at the initial stage.
44. However, the Council submits that the requested document does fall within the scope of the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001. This provision provides that: *“access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure”*.
45. It follows from this, and from the Court's case law, that access to documents *“containing opinions for internal use”*, the object of which is to be used *“as part of deliberations and preliminary consultations within the institution”* and the disclosure of which would *“seriously undermine the institution's decision-making process”*, can be refused¹³, unless there is an overriding public interest in disclosure. The parts of the requested document which have not been disclosed to the public meet these requirements.

¹³ Judgment of the Court of Justice of 21 July 2011 in case C-506/08, *Sweden v MyTravel and Commission*, paragraph 79, EU:C:2011:496, (emphasis added).

46. Firstly, it can hardly be contested that the requested document contains “*opinions*” – in this case, an opinion of the CLS. In addition, the content of this opinion, which relates, as previously explained, to internal procedural issues, including interpretation of the Council’s Rules of Procedure, indicates that the requested document was issued for “*internal use*”.
47. Secondly, the requested document addresses issues which were essential for the structuration and the conduct of the deliberation by the Council and its preparatory bodies on the proposal. It is worth noting that the CLS opinion was issued at the very beginning of this process, on the 27 September 2022, that is, only nine days after the proposal was received by the Council. This timeframe illustrates the fact that the requested document was essential to provide guidance to the Members of the Council on the conditions under which the Commission’s proposal should be assessed and treated. In addition, the distribution pattern of the requested document – which was meant for Members of the Council – as well as the substantive issues it examines, most notably pertaining to the applicable rules governing the examination of the proposal within the Council, demonstrates that the requested document constituted an essential part of the deliberation “*within the institution*”.
48. Thirdly, the Council contends that full disclosure of the requested document entails a reasonably foreseeable risk of undermining “*seriously*” the Council’s decision-making process.
49. In Section II (see above), the Council has demonstrated that the requested document and the procedure to which it relates were both particularly sensitive and go beyond the scope of the procedure in question. It is worth recalling that the Court of Justice has recognised the relevance of this criterion in determining the applicability of the exception provided under Article 4(3) of Regulation 1049/2001.¹⁴

¹⁴ Judgment of the Court of Justice of 17 October 2013 in case C-280/11 P, *Council v Access Info Europe*, paragraph 63, EU:C:2013:671.

50. Furthermore, the Court has previously held, in a case relating to a request for access to a Commission internal memorandum in the context of a merger control procedure, that disclosure of such document could seriously undermine the decision-making process of an institution even after the procedure in question had been closed. This is the case if the institution could “*be called upon to recommence its investigation activities with a view to the eventual adoption of a new decision*” on the same procedure.¹⁵ The Council argues that this conclusion is applicable, by analogy, to the circumstances at hand.
51. Therefore, in light of the considerations set out above, and taking due account of the specificity and novelty of the procedure for adopting measures for the protection of the Union budget for the purpose of the Conditionality Regulation, the Council concludes that the parts of the opinion which have not yet been made publicly available, fall within the scope of Article 4(3) second subparagraph of Regulation (EC) No 1049/2001.
52. Concerning the assessment of the public interest in disclosure in relation to this exception, the Council refers to Section V of this reply.

IV. Partial access pursuant to Article 4(6) of Regulation (EC) No 1049/2001

53. In its previous decisions, the Council considered that disclosure of certain parts of the requested legal opinion did not represent a risk for the interests protected by the invoked exceptions. As a consequence, it granted partial access to document 12904/22 and notably to the first two paragraphs.
54. The Council has now examined whether extended partial access could be granted to the document in question.
55. In light of its examination, the Council concludes that all the parts of the requested document which have not been disclosed in its first reply are covered by the above-mentioned exceptions in their entirety and that no additional partial access can be granted.

¹⁵ Judgment of the Court of Justice of 28 June 2012 in case C-404/10 P, *Commission v Éditions Odile Jacob*, paragraphs 128 to 130, EU:C:2012:393.

V. Assessment of the public interest in disclosure

56. As abovementioned, Article 4(1) of Regulation (EC) No 1049/2001 does not provide for a test of balancing the harm to the protected interest against the public's interest in disclosure. Thus, once the Council has come to the conclusion that release would indeed undermine the public interests protected pursuant to fourth indent of Article 4(1)(a) of Regulation (EC) No 1049/2001, this conclusion is not conditioned by any obligation – or even possibility – to take into account "*an overriding public interest in disclosure*" as is the case for Article 4(2) and (3) of the Regulation.
57. However, to the extent that the Council's refusal to grant full access to the requested document is also based on Article 4(2) second indent and 4(3) second subparagraph of Regulation (EC) No 1049/2001, and for the sake of completeness, the Council has considered the public interest in the disclosure of the requested document in relation to these exceptions.
58. The Council is called upon to carefully balance the public interest in having access to the requested document against the need to protect the interests under the exceptions of Regulation (EC) No 1049/2001, including the interest of an institution to protect its decision-making, to seek advice from its legal counsellors and to preserve the equality of arms in view of a reasonably foreseeable litigation risk. In that regard, the Council also recalls the nature and purpose of the requested document, which is a technical legal assessment, and which does not contain positions of political decision-makers. In the same vein, since the analysis concerns primarily procedural issues inherently internal to the Council, the public interest in disclosure is all the more limited. Moreover, this document is not linked to a legislative procedure.
59. The Council also notes that the arguments put forward by the applicant in the confirmatory application do not provide an appropriate basis for establishing that, in the present case, the principle of transparency is of especially pressing concern and could thus prevail over the reasons justifying the refusal to grant full access, as developed above.

60. What is more, the Council considers that the refusal to fully disclose the particular opinion concerned by the requested document does not prevent the possibility for the public to scrutinize either the Commission's proposal or its handling in the Council, as is clearly shown by the lively public debate on the topic.
61. In light of the above, the Council concludes, on account of the particularly sensitive nature of the legal advice as well as of the need of preserving the effectiveness of the institution's decision-making process, that in the specific case at hand, the public interest invoked by the applicant does not outweigh the need to preserve the interests protected under Article 4(2), second indent and Article 4(3) second subparagraph of Regulation (EC) No 1049/2001.

CONCLUSION

62. In the light of the above considerations, the Council confirms that access to the parts of document 12904/22 that have not been already made public is refused, pursuant to Article 4(1)(a) fourth indent, to Article 4(2) second indent and to Article 4(3) second subparagraph of Regulation (EC) No 1049/2001.
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