



Brussels, 2 December 2025  
(OR. en)

15298/25

LIMITE

API 127  
INF 214

**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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No. prev. doc.: 15296/25

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Subject: Public access to documents - Confirmatory application N° 28/c/01/25

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Delegations will find attached a draft reply to confirmatory application No 28/c/01/25  
(see 15296/25).

REPLY TO CONFIRMATORY APPLICATION 28/C/01/25

made by email on 12 November 2025 and registered on the same day

**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 29 September 2025, the Applicant submitted a request for public access to “*Trilogue negotiation documents on Proposal for a directive - COM(2023)166 final, 2023/0085 (COD): Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on substantiation and communication of explicit environmental claims (Green Claims Directive)*”.
2. On 11 November 2025, the General Secretariat of the Council (GSC) replied to the Applicant by providing full access to the following documents:
  - **ST 11554/24**: Note of 25 June 2024 from the General Secretariat of the Council to the delegations on the proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) – Four-column document
  - **WK 2191/2025 INIT**: Meeting Document of 18 February 2025 from the General Secretariat of the Council to the Working Party on the Environment on the Green Claims Directive: WPE on 20 February 2025: updated four-column table

- **WK 2191/2025 REV 1:** Idem
- **WK 3863/2025 INIT:** Meeting Document of 24 March 2025 from the General Secretariat of the Council to the Working Party on the Environment on the Green Claims Directive: WPE on 28 March 2025: updated four-column table
- **ST 7680/25:** Note of 4 April 2025 from the General Secretariat of the Council to the Permanent Representatives Committee on the proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) - Preparation for the trilogue

and by providing a partial access to document **ST 10118/25** which contains a note of June 2025 from the General Secretariat of the Council to the Permanent Representatives Committee on the proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) for the preparation for the trilogue. Access to the redacted parts of this document was refused on the basis of the protection of the decision-making of the institutions pursuant to Article 4(3), first indent of Regulation (EC) No 1049/2001.

3. On 12 November 2025, the Applicant submitted a confirmatory application asking her application to be reconsidered in the light of the recent ruling in Case [T-590/23](#) - *De Capitani v Council*. In her confirmatory application, the Applicant also requested access to the “*recent correspondence with the Commission*”. However, as this was not mentioned in her initial request, this was registered as a new initial request (under the reference 25/3397) and is therefore outside the scope of this confirmatory application.

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

4. Following this 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 fully acknowledges the principle of transparency, particularly in relation to decision-making processes of a legislative nature, since openness in that respect contributes to strengthening democracy by allowing citizens to scrutinize the information which has formed the basis of a legislative act.
6. The proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) was submitted by the Commission to the European Parliament and to the Council on 23 March 2023. The proposal aims to make green claims reliable, comparable, and verifiable across the EU and help establish a level playing field when it comes to environmental performance of products.
7. The Working Party on the Environment started its examination on 3 April 2023. The Council reached a general approach on this file on 17 June 2024<sup>1</sup>. A first trilogue took place on 28 January 2025. Subsequently, meetings have been taking place between the institutions at technical level. A second trilogue was held on 24 April 2025. Afterwards, work has continued at technical level between the institutions. The ongoing interinstitutional discussions on the proposal have throughout been complex and politically sensitive and have required the conciliation of divergent approaches of the negotiators.

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<sup>1</sup> [11312/24](#)

8. Document ST 10118/25 was drawn up in view of the third trilogue which was aimed at being the final one. The trilogue was initially planned to take place on 10 June 2025, then postponed to 23 June 2025 and eventually postponed indefinitely. The revised mandate agreed by the Permanent Representatives Committee on 18 June 2025 aimed at reaching an overall balanced agreement with the European Parliament on the outstanding issues which means that trade-offs would have to be done within issues and between issues. A key issue was the application of the provisions of the Directive to microenterprises, where both the European Parliament and the Commission have a different position than the Council. However, other outstanding issues were also fundamentals to reaching agreement, including a simplified procedure and climate claims.
9. At the initial stage, access was granted to document ST 10118/25 with the exception of Section II which contains the Presidency suggestions in view of the trilogue and the parts of the 4<sup>th</sup> column on which there was not yet an agreement with the European Parliament. Section II of the document contains the Council's negotiation strategy in view of concluding the negotiations with the European Parliament. It sets out the Presidency's suggestions for flexibilities vis-a-vis the demands of the European Parliament and the concessions that the Council could be able to accept in return for flexibilities and concessions from the European Parliament in order to achieve an overall agreement at the trilogue. The fourth column of the document set out in the annex of document ST 10118/25 contains details of the Council revised mandate.
10. It should be noted that the '4-column document' set out in the annex of document ST 10118/25 is of a different type than the one which is used in the trilogues with the European Parliament. While the 4-column documents used during the trilogues are, by definition, shared with the European Parliament, the one contained in the annex of document ST 10118/25 was not shared with the European Parliament as it contains negotiation elements that were not included in the 4-column table shared with the European Parliament. It is an internal preparatory document outlining certain issues to be considered in the political discussion at the level of the Committee of Permanent Representatives (Coreper). It indicates possible flexibilities and fall-back options of the Council to allow the Presidency some room for manoeuvre during the upcoming trilogue meeting with the European Parliament, options that are contingent to the overall balance of a package deal.

11. The document sets out the progress achieved and the political importance of some central issues in the proposal. It was intended to transmit a compromise text to Coreper for a revised mandate or to receive guidance from it for the subsequent trilogue. It also contains 4-column table with Presidency's compromise proposals, comments and suggestions in the 4th column.
12. In that regard, the Council points out that, far from being limited to compromise proposals that have been negotiated and provisional agreements that have been reached in the interinstitutional discussions, the requested document reflects positions that have been drawn up for internal use in the preliminary discussions within the Council's preparatory bodies with the purpose of forming the Council's negotiation strategy and defining the Council's positions in the negotiations. In order to allow for an effective political decision-making, it is of particular importance to ensure workable discussions of the relevant Council preparatory bodies at each stage of the legislative procedure. Many of the elements set out in the document in question are the result of difficult negotiations between the Member States, taking also into account the flexibility the European Parliament might or might not show during the negotiations. They give details of progress made and thereby reflect the difficulties that still need to be addressed, assuming that they were not meant to become public at the respective stage of the negotiations. Full release of the document would seriously undermine the mutual trust and confidence that enable the Council preparatory bodies to perform their task effectively. It also entails the risk that Member States become more entrenched in their positions to the detriment of the possibility of finding possible compromise solutions.

13. Moreover, as set out in paragraph 7 above, the ongoing interinstitutional discussions on the proposal for the Green Claims Directive are complex and require the conciliation of divergent approaches of the negotiators. The assessments contained in the requested document are an essential part of the process and their disclosure could lead to the entrenching of negotiators' positions. This would be particularly harmful to the prospect of a successful outcome on the file. Should the information on Council's flexibilities as regards some of the elements of the package be disclosed, pressure will increase for the Council to concede on some of its elements before reaching the overall balance on the whole package. Releasing at this stage the preliminary negotiation positions of the Council and revealing the way those are formed would be detrimental for its position in the context of the subsequent discussions between the co-legislators. In that respect, suffices it to say that the European Parliament does not share such information with the Council. Thus, if only its internal views were disclosed, the Council would face an asymmetric situation where its position and negotiation strategy would be exposed, thus limiting the leeway of the Council in the upcoming interinstitutional discussions. Similarly, revealing at this stage the Council's margins of manoeuvre in the negotiation process could trigger pressure from the other negotiator on the Council, thus putting it at a disadvantage in further negotiations to the detriment of the overall balance of the agreement to be reached. For the sake of completeness, the Council notes that the GSC has granted full access at the initial stage to the Applicant to document ST 7680/25 containing a similar note and four-column table presented to Coreper in preparation of the second trilogue, as that trilogue had already taken place at the time of the request. The concrete risk of harming the decision-making procedure lies in disclosing the negotiating strategy of the Council before the trilogue has taken place.

14. The situation is different from past cases regarding documents relating to legislative files. In case T-540/15 (*De Capitani v Parliament*)<sup>2</sup>, the documents at stake were trilogue tables drawn up for the purposes of ongoing trilogue meetings (and shared between the institutions). Cases T-163/21 (*De Capitani v Council*)<sup>3</sup> and T-590/23 (*De Capitani v Council*)<sup>4</sup> concerned working documents prepared within preparatory bodies of the Council at the stage of establishing the preliminary position of the Council regarding the respective legislative files. They contained compilations of comments of the delegations of the Member States and/or the Presidency of the Council on legislative proposals. Those documents therefore contained the preliminary positions of the Member States. On the contrary, the requested document in the present case has been prepared after the Council has established its preliminary position for the trilogues regarding this legislative proposal, and after two trilogues have already taken place, in the preparation of the third trilogue. The redacted parts of document ST 10118/25 do not contain the preliminary position of the Council for the trilogue meeting, but rather the Council's negotiating strategy for an upcoming meeting that has not yet taken place.
15. In that context, it is also useful to recall that, in her decision related to complaint 360/2021/TE<sup>5</sup> which concerns a request for access to the same kind of documents as in the present case, the European Ombudsman took the view that "*it was reasonably foreseeable that disclosing the Council's negotiating strategy would weaken its negotiating position, and, hence, would substantially impact the decision-making process.*" She also acknowledged that there was no maladministration by the Council in refusing to grant full access to documents (of the same type of document ST 10118/25) while negotiations on the relevant parts of the legislative proposal were ongoing.

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<sup>2</sup> Judgment of the General Court of 22 March 2018 in case T-540/15, *De Capitani v European Parliament*.

<sup>3</sup> Judgment of the General Court of 25 January 2023 in case T-163/21, *De Capitani v Council*.

<sup>4</sup> Judgment of the General Court of 29 October 2025 in case T-590/23, *De Capitani v Council*.

<sup>5</sup> [13728/21](#)

16. In conclusion, the disclosure of Section II and the whole fourth column of the table contained in the annex of ST 10118/25 at a moment when the institutions are seeking to find an appropriate balance of the various interests involved would severely affect the negotiating process and diminish the chances of the Council reaching an agreement with the European Parliament. It would indeed seriously undermine the Council's negotiating position as it would reveal its tactics and flexibilities to the European Parliament in a way that would entail that the Council's envisaged final landing zone would likely become the starting point for the final negotiations and thus put the Council in a detrimental negotiation position. In that context, it should be noted that the European Parliament does not in advance disclose any documents containing neither possible final concessions nor its overall negotiations strategy. In a situation, where only the Council's negotiation strategy was disclosed beforehand, the Council would face an asymmetric situation where its final flexibilities would be exposed, whereas not those of the European Parliament, thereby limiting the leeway of the Council in the interinstitutional negotiations. The Council therefore concludes that full disclosure of the requested document would seriously undermine the ongoing decision-making process under Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

### **C. ASSESSMENT OF THE PUBLIC INTEREST IN DISCLOSURE**

17. When applying the exception provided for in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001, the Council has to strike a balance between the need to protect its decision-making process and the legitimate interest in transparency, taking into account all relevant aspects and the context in which the document was drafted. In this regard, the Council considers that the legitimate public interest in the release of information does not outweigh the equally legitimate need to protect its decision-making process.
18. As stated above, the Council fully acknowledges the importance of transparency as a basic democratic principle. However, the Council also considers that the interest in a public debate on legislative proposals cannot automatically override the protection of the effectiveness of the decision-making process in all cases.

19. The Council notes that the Applicant has not put forward any arguments in the confirmatory application justifying why, 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 in paragraphs 9 to 16 above.
20. Taking into account all relevant aspects, the Council concludes, on account of the need to preserve the effectiveness of its decision-taking, that in the specific case at hand the public interest does not outweigh the interest protected under Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

**D. PARTIAL ACCESS PURSUANT TO ARTICLE 4(6) OF REGULATION (EC) NO 1049/2001**

21. Article 4(6) of Regulation (EC) No 1049/2001 provides that “if only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released”.
22. The Council has examined the possibility of granting further partial access to document ST 10118/25. The Council has concluded that access can be granted to paragraphs 7, 8 and 9, as their content is of a general nature and their disclosure would not seriously undermine the Council’s decision-making process. However, no further access can be granted to the rest of Section II and to the remaining redacted parts of the 4<sup>th</sup> column of the table set out in annex. Disclosure of these parts of the document would seriously undermine the decision-making process of the institutions pursuant to Article 4(3) first indent, of Regulation (EC) No 1049/2001 as explained above.

**E. CONCLUSION**

23. The Council decides that, in addition to the parts which were already been made public at the initial stage, paragraphs 7, 8 and 9 can be disclosed and that access to the remaining parts of the document has to be refused pursuant to Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.