Council of the European Union

Brussels, 12 November 2024
(OR. en)

15322/24

INF 266
API 126

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 28/c/01/24

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 7 October 2024 and registered on the same date (Annex 1);
- reply from the General Secretariat of the Council dated 8 October 2024 (Annex 2);
- e-mail from the applicant received on 9 October 2024 (Annex 3);
- initial request 24/2605 dated 9 October 2024 (Annex 4)
- exchange of emails on request 24/2605 from 9 October 2024 (Annex 5);
- reply to that request dated 28 October 2024 (Annex 6);
- exchange of emails dated 28 October 2024 (Annex 7);
- addendum to the initial reply dated 5 November 2024 (Annex 8);
- confirmatory application dated 6 November 2024 and registered on the same day (Annex 9).

ANNEX 1

From: document-request@cis.consilium.europa.eu <document-request@cis.consilium.europa.eu>
Sent: lundi 7 octobre 2024 14:41
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Subject: Consilium - Electronic Request for Access to documents [ENGLISH]

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application.
This electronic form has been submitted in ENGLISH.

Form of address
DELETED

Family name
DELETED

First name
DELETED

E-mail
DELETED

Occupation
Media
I submit this request on my own behalf.
Name of the organisation

Full postal address
DELETED

Telephone
DELETED

Requested document(s)
Hi, could you please send me the working documents ahead and after the WP meetings below, concerning the AI ACT, with individual positions and amendments from each governement, from the « Working Party on Telecommunications and Information Society" ?
Here the dates :
• 20 July 2022 (CM 3943/22)
• 22 September (CM 4409/22)
• 29 September (CM 4481/22)
• 25 October (CM 4913/22)
• 8 November (CM 5171/22)
1st option
EN
2nd option

Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Head of Unit

Brussels, 8 October 2024

DELETED
Email: **DELETED**

Ref. 24/2582

Request made on: 07.10.2024

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.[1]

You have requested access to the working documents ahead and after the meetings of the Working Party on Telecommunications and Information Society of 20 July 2022, 22 & 29 September 2022, 25 October 2022 and 8 November 2022 concerning the AI ACT, with individual positions and amendments from each Member State.

The following documents were identified as corresponding to your request:

WK 13640 2022 INIT
WK 13620 2022 INIT
WK 13551 2022 INIT
WK 13544 2022 INIT
WK 13518 2022 INIT
WK 13503 2022 INIT
WK 13464 2022 INIT
WK 13426 2022 INIT
WK 13423 2022 INIT
WK 13389 2022 INIT
WK 13381 2022 INIT
WK 13380 2022 INIT

[1] The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

WK 13372 2022 INIT
WK 13371 2022 INIT
WK 13354 2022 INIT
WK 13351 2022 INIT
WK 13265 2022 REV 1
WK 13265 2022 INIT
WK 13264 2022 INIT
WK 13263 2022 INIT
WK 13260 2022 INIT
WK 13259 2022 INIT
WK 13258 2022 INIT
WK 13257 2022 INIT
WK 13238 2022 INIT
WK 13237 2022 INIT
WK 13236 2022 INIT
WK 13233 2022 INIT
WK 13232 2022 INIT
WK 13231 2022 INIT
WK 13230 2022 INIT
WK 13228 2022 INIT
WK 13226 2022 INIT
WK 12904 2022 INIT

You will find them in attachment.

Yours sincerely,

Fernando FLORINDO

Enclosures: 34 – WeTransfer link to download the documents: https://we.tl/t-obtCUIzWGx

From: DELETED
Sent: mercredi 9 octobre 2024 11:06
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Subject: Re: Ref. 24/2582

Good morning, I follow up on the letter received yesterday by M. Florindo.
Thank you for the documents sent to me. However, not all countries are present in the wetransfer you sent: could you please send me the **French document** on 1st and 2nd part of the compromise proposal from 4 and 5 octobre 2022?

Also, the documents sent only concern the 4th and 5th Octobre 2022. My request is on **ALL documents** ahead and after the dates mentioned in my request (20 July; 22 Sept; 29 Sept; and 8 Nov).

Could you therefore, please send me the remaining documents?

All my best regards,
DELETED

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ANNEX 4

From: document-request@cis.consilium.europa.eu <document-request@cis.consilium.europa.eu>
Sent: mercredi 9 octobre 2024 11:10
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Subject: Consilium - Electronic Request for Access to documents [ENGLISH]

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application.
This electronic form has been submitted in ENGLISH.

Form of address
DELETED

Family name
DELETED

First name
DELETED

E-mail
DELETED

Occupation
Media
I submit this request on my own behalf.
Name of the organisation

Full postal address
DELETED

Telephone
DELETED

Requested document(s)
Good morning, could you please send me ALL the documents on the AI ACT, included governments positions, ahead and after the Coreper meeting on the 18th November 2022?
1st option
EN
2nd option

From: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Sent: mercredi 9 octobre 2024 17:57
To: DELETED
Subject: Ref. 24/2605 - DELETED - FW: Consilium - Electronic Request for Access to documents [ENGLISH]

Dear DELETED,

Thank you for your request for access to documents of the Council of the European Union.

Your request access to “ALL the documents on the AI ACT, included governments positions, **ahead and after** the Coreper meeting on the 18th November 2022”.
In order to reply to your request as completely as possible, could you please let us know which period your request would cover?

Thank you in advance for your reply.

Yours sincerely,

Transparency

General Secretariat of the Council
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Rue de la Loi/Wetstraat, 175 - B-1048 Bruxelles/Brussel - Belgique/België
www.consilium.europa.eu | access@consilium.europa.eu

Disclaimer: The views expressed are solely those of the writer and may not be regarded as stating an official position of the Council of the EU
Clause de non-responsabilité: Les avis exprimés n'engagent que leur auteur et ne peuvent être considérés comme une position officielle du Conseil de l'UE

From: DELETED
Sent: mercredi 9 octobre 2024 22:02
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Subject: Re: Ref. 24/2605 - DELETED - FW: Consilium - Electronic Request for Access to documents [ENGLISH]

Good evening, July- December 2022 would be enough.
And please, send me also the position of the remaining countries you've already sent me from 4th and 5th Oct 22. France, for instance, was missing.
Best regards,

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Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Head of Unit

Brussels, 28 October 2024

DELETED
Email: **DELETED**
Ref. 24/2605
Request made on: 09.10.2024

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.[2]

You request access to all documents on the AI Act, including government positions from July 2022 to December 2022.

The following documents were identified as corresponding to your request:

ST 11124 2022 INIT
ST 12206 2022 INIT
ST 12206 2022 REV 1
ST 12302 2022 INIT
ST 12302 2022 COR 1
ST 12549 2022 INIT
ST 13102 2022 INIT
ST 13955 2022 INIT
ST 14336 2022 INIT
ST 14954 2022 INIT
ST 14954 2022 ADD1
ST 15698 2022 INIT

[2] The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

WK 14040 2022 REV 1
WK 14040 2022 INIT
WK 13640 2022 INIT
WK 13628 2022 INIT
WK 13620 2022 INIT
WK 13551 2022 INIT
WK 13544 2022 INIT
WK 13518 2022 INIT
WK 13503 2022 INIT
WK 13464 2022 INIT
WK 13426 2022 INIT
WK 13423 2022 INIT
WK 13389 2022 INIT
WK 13381 2022 INIT
WK 13380 2022 INIT
WK 13372 2022 INIT
WK 13371 2022 INIT
WK 13354 2022 INIT
WK 13351 2022 INIT
WK 13265 2022 REV 1
WK 13265 2022 INIT
WK 13264 2022 INIT
WK 13263 2022 INIT
WK 13260 2022 INIT
WK 13259 2022 INIT
WK 13258 2022 INIT
WK 13257 2022 INIT
WK 13238 2022 INIT
WK 13237 2022 INIT
WK 13236 2022 INIT
WK 13233 2022 INIT
WK 13232 2022 INIT
WK 13231 2022 INIT
WK 13230 2022 INIT
WK 13228 2022 INIT
WK 13226 2022 INIT
WK 12904 2022 INIT
WK 12308 2022 INIT
WK 12224 2022 INIT
WK 12171 2022 INIT
WK 11910 2022 INIT
WK 11852 2022 INIT
WK 11852 2022 ADD 1
WK 11851 2022 INIT
WK 11792 2022 REV 1
WK 11792 2022 INIT
WK 11769 2022 INIT
WK 11734 2022 INIT
WK 11564 2022 INIT
WK 11546 2022 INIT
WK 11523 2022 INIT
WK 11513 2022 INIT
WK 11481 2022 INIT
WK 11475 2022 INIT

WK 11473 2022 INIT
WK 11471 2022 INIT
WK 11419 2022 INIT
WK 11412 2022 INIT
WK 11410 2022 INIT
WK 11401 2022 INIT
WK 11383 2022 REV 1
WK 11383 2022 INIT
WK 10261 2022 INIT
WK 10003 2022 INIT
WK 9788 2022 INIT

Please note that all the abovementioned ST documents are public and available in the register of Council's documents.

Please also note that some of the abovementioned WK documents were already sent to you in the context of your previous request (ref. 24/2582).

Nevertheless, for your convenience, you will find in attachment all listed documents.

Yours sincerely,

Fernando FLORINDO

Enclosures: 77 – WeTransfer link to download the documents: https://we.tl/t-RsGIJSonNq

From: DELETED
Sent: lundi 28 octobre 2024 11:33
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Subject: Re: Ref. 24/2582

Hi, good morning, I haven't received any follow up answer from your side.
If it is easier for you, could I come to the Council and we could see together which documents, among those requested, might be useful for my story.
This would help me a lot, as I start running against time.

Let me know,
Best regards,
DELETED
PS: see my email below, send 8/10.

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Le mer. 9 oct. 2024 à 11:05, DELETED a écrit :

Good morning, I follow up on the letter received yesterday by M. Florindo.
Thank you for the documents sent to me. However, not all countries are present in the wetransfer you sent: could you please send me the **French document** on 1st and 2nd part of the compromise proposal from 4 and 5 octobre 2022?

Also, the documents sent only concern the 4th and 5th Octobre 2022. My request is on **ALL documents** ahead and after the dates mentioned in my request (20 July; 22 Sept; 29 Sept; and 8 Nov).

Could you therefore, please send me the remaining documents?

All my best regards,
DELETED

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From: TRANSPARENCY Access to documents (COMM)
Sent: lundi 28 octobre 2024 16:00
To: DELETED
Subject: Ref. mj - RE: Ref. 24/2582

Dear DELETED,

Thank you for your message.

Please note that when replying to your initial request, we had checked in our internal database and we had identified all the documents linked to the 5 meetings mentioned in your request.

As we have now replied to your other request (the one for documents related to the AI Act from July to December 2022 – ref. 24/2605), you should have a better picture of the state of play of this file during the requested period.

We haven't been able to find a 'French document on 1st and 2nd part of the compromise proposal from 4 and 5 October 2022' in our database. We are checking with the relevant service and we will get back to you as soon as possible.

Yours sincerely,

Transparency

General Secretariat of the Council
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Rue de la Loi/Wetstraat, 175 - B-1048 Bruxelles/Brussel - Belgique/België
www.consilium.europa.eu | access@consilium.europa.eu

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Clause de non-responsabilité: Les avis exprimés n'engagent que leur auteur et ne peuvent être considérés comme une position officielle du Conseil de l'UE

From: DELETED
Sent: lundi 28 octobre 2024 16:10
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Subject: Re: Ref. mj - RE: Ref. 24/2582

ah, thank you for this explanation. Indeed I'm surprised that only France is missing in this compilation of countries' positions, especially because in that period, between July and December 2022, the French Presidency had already ended, so they should have sent their positions, like the others.
Or did they send a separate paper or non-paper?
Thank you for your update,
Best,
DELETED

ANNEX 8

Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Head of Unit

Brussels, 5 November 2024

DELETED
Email: **DELETED**

Ref. 24/2582-ADD

Request made on: 07.10.2024
1st reply sent on: 08.10.2024

Dear **DELETED**,

Further to our reply of 8 October 2024 concerning your request for access to documents of the Council of the European Union[3], your email of 9 October 2024 in which you requested access to the French document on 1st and 2nd part of the compromise proposal from 4 and 5 October 2022 on the Artificial Intelligence Act and our reply of 28 October 2024 to your other request related the AI Act (ref. 24/2605), we are now able to reply to you concerning this document.

After having checked with the relevant service, one email of the French delegation with comments on the first part of third compromise proposal on AIA (document 12206/1/22 REV 1 – Arts 1-29, Annexes I-IV) was identified.

I regret to inform you that access to this document cannot be given for the reasons set out below.

This document contains sensitive and strategic information relating to public security and national defence of France.

[3] The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

Release of the information contained in this document represents a risk of reasonably foreseeable and not purely hypothetical harm to the aforementioned interests, to the extent that strategic elements relating to public security and national defence are mentioned and are not intended to be brought to the attention of the public.

Disclosure of the document would undermine the protection of the public interest as regards public security and the European Union's defence and military matters. As a consequence, the General Secretariat has to refuse access to this document.[4] [5]

Developing further the reasons to refuse access to the document could harm the interests protected by these exceptions.

We have also looked into the possibility of releasing parts of the document.[6] However, as the exceptions to the right of access apply to its entire content, the General Secretariat is unable to give partial access.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.

Yours sincerely,

Fernando FLORINDO

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[4] Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.
[5] Article 4(1)(a), second indent, of Regulation (EC) No 1049/2001.
[6] Article 4(6) of Regulation (EC) No 1049/2001.

Investigate Europe

[redacted]
Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Head of Unit, Mr. Florindo

Contact: [redacted]
Phone: [redacted]
E-Mail: [redacted]
Internet: investigate-europe.eu

Date: November 6, 2024

Ref. 24/2582-ADD - Confirmatory Application

Dear Mr. Florindo,

thanks for your reply to my request for access to the documents reflecting the French position on the AI ACT, specifically the 1st and 2nd part of the compromise proposal, from 4 and 5 October 2022, on the Artificial Intelligence Act (Ref. 24/2605 and document 12206/1/22 REV 1 – Arts 1-29, Annexes I-IV).

I do not accept the decision to refuse the access to the listed docs. I hereby send a confirmatory application and ask the Council to review the decision for the following reasons:

1. Your claim that "disclosure of the document would undermine the protection of the public interest as regards public security and the European Union's defence and military matters" is purely hypothetical. How can such a document which describes the position of a member state to a legislative proposal have, **2 years after it has been delivered,** such far reaching consequences? Without any further proof thereof your claim is not credible.

2. If sensitive informations, concerning precise public security or military informations of nowadays, were included in the working documents - and I doubt given the age of the documents - you could indeed hide these precise parts, keeping the position of the country on the specific legislativ proposals, which **is my right to know and disclose, especially now that the legislative text (AI ACT) has been passed.**

3. The AI ACT is the first legislative regulation passed in the world. It will have affects our companies, EU internal market, our trade with third countries, but it will especially change our way of living, accepting, under precise restrictions, a public control on our public actions and mouvements. This clearly creates an **overriding public interest** in the disclosure of all WK documents produced during the negotiations in the Council on this important law proposal.

4. I remind that it is a basic task of journalists in a democratic society to report about ongoing legislative processes or approved legislations and to present the audience and the citizens the arguments brought forward by the different legislative actors. Today I cannot fulfill this duty without access to the appropriate information and the respective documents. **Citizens taking influence on the legislation is the basic idea of democracy.**

By refusing access to the information contained in the listed WK documents the Council denies the EU citizens their democratic right to scrutinise how the national governments deal with draft law for the Digital Markets Act and by this violates the articles 1 and 10(3) of the Treaty on the European Union (TEU).

5. Moreover, according to the EU Court of Justice ruling T-163/21, the decision to withhold relevant documents regarding the legislative process in the Council violates the case law of the European Court of Justice. The judges ruled: "It should be recalled that, in a system based on the principle of democratic legitimacy, **co-legislators must be answerable for their actions to the public**...If citizens are to be able to exercise their democratic rights they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information….".

6. I add to that the EU Court of Justice decision on the appeal ***IFAW*** Internationaler Tierschutz-Fonts Gmbh v Commission (T-168/02) where the judges rules that "**Member States are obliged, under the duty of loyal cooperation, not to jeopardise the EU rules on access to documents**. The Court has clarified that art. 4(5) (of the 1049 regulation on access to documents) does require joint implementation and cooperation amongst the administrations of the Member States and EU institutions. When the institution receives an application for access to a document drafted by any Member State, then a dialogue must take place in order to decide whether access must be granted. **If the Member State objects, then it is required to do so within the time limits of art. 7(1) of the Regulation and justify the objection upon art. 4 (1) to (**3). By not doing so, the institution is obliged to grant access, unless it considers that refusal must be denied following an assessment of art. 4. If the Member State provides a reasoned refusal, then the institution is obliged to incorporate it into its decision on access, allowing for the judicial review or the complaint procedure to the EU Ombudsman to take place.

That means the decision is legally not correct. So I repeat the request for access to all documents related with the French position on the AI ACT (Ref. 24/2605 and document 12206/1/22 REV 1 – Arts 1-29, Annexes I-IV).

Yours sincerely,

[redacted]