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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	16239/25
Subject:	Public access to documents - Confirmatory application N° 32/c/01/25

Delegations will find attached a draft reply to confirmatory application No 32/c/01/25
(see 16239/25).

REPLY TO CONFIRMATORY APPLICATION 32/c/01/25
made by email on 1 December 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 10 November 2025, the applicant submitted an initial application for access to all documents related to interinstitutional files 2024/0110(NLE), 2025/0019(NLE) and 2025/0168(NLE), corresponding, respectively, to Regulation (EU) 2024/1745, Regulation (EU) 2025/395 and Regulation (EU) 2025/1494, all concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.
2. On 21 November 2025, the General Secretariat of the Council (GSC) replied to the applicant, identifying 20 public documents, 243 documents containing the evidence supporting the imposition of measures of individual application, and 37 further documents. It refused access to the 280 non-public documents based on the legal presumption of confidentiality contained in Article 8b of Council Decision 2014/512/CFSP of 31 July 2014 on restrictive measures in view of Russia’s actions destabilising the situation in Ukraine.
3. On 1 December 2025, the applicant submitted the present confirmatory application, restricting it to documents or parts of documents concerning the insertion or amendment of Articles 11a, 11b and 11d of Regulation (EU) 833/2014 and explicitly excluding any documents containing the evidence supporting the imposition of measures of individual application from its scope.
4. In this confirmatory application, the applicant deems the invoked presumption inapplicable, considers that at any rate, it does not dispense the Council with an individual examination of the documents and insists on the particular importance of transparency in legislative matters.

DOCUMENTS COVERED BY THE CONFIRMATORY APPLICATION

5. Based on the scope of the confirmatory application defined by the applicant, as set out above, the Council has determined that only parts of the following documents are covered by it, as

they concern the insertion or amendment of Articles 11a, 11b and 11d of Regulation (EU) 833/2014:

- For procedure 2024/0110(NLE): 8281/24, 8282/24, 10879/24 and 11357/24
- For procedure 2025/0019(NLE): 5461/25, 6024/25 and 6024/1/25 REV 1
- For procedure 2025/0168(NLE): 9124/25

PRESUMPTION OF CONFIDENTIALITY

6. Article 6(4) of Council Regulation (EU) No 833/2014 states: *“Any document held by the Council, the Commission or the High Representative of the Union for Foreign Affairs and Security Policy (the ‘High Representative’) for the purpose of ensuring the enforcement of the measures set out in this Regulation, or of preventing the violation or circumvention thereof, shall be subject to professional secrecy and shall enjoy the protection afforded by the rules applicable to the Union institutions. That protection shall also apply to the joint proposals from the High Representative and the Commission for the amendment of this Regulation and to any preparatory documents related to them.*

It shall be presumed that the disclosure of any documents or proposals referred to in the first subparagraph would harm the security of the Union or that of one or more of its Member States or the conduct of their international relations.”

7. The requested documents contain joint proposals for the amendment of Regulation (EU) No 833/2014 or preparatory documents related to them. They are therefore covered by this presumption.
8. Nevertheless, taking into account the arguments the applicant raises in relation to the limited and well-defined group of documents in order to rebut the presumption invoked by the GSC, the Council considers that there are good reasons to proceed to an individual assessment of the relevant parts of the requested documents.
9. At the confirmatory stage, the European External Action Service and the European Commission were consulted on documents 8281/24, 5461/25 and 9124/25, pursuant to Article 4(4) of Regulation (EC) No 1049/2001, and maintained a negative position concerning their – full or partial – disclosure.

ASSESSMENT OF THE DOCUMENTS

Document 8281/24

10. Document 8281/24 contains a joint proposal of 3 May 2024 for a Council Regulation amending Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (interinstitutional file 2024/01110(NLE)).
11. Only recital 21 (page 5) and paragraph 18 (pages 18 and 19) of this document are covered by the confirmatory application.
12. It should be mentioned at the outset that the decision-making procedure concerned was not legislative in nature, contrary to the applicant's assertion. Indeed, the legal act to which the requested document relates cannot be considered as a legislative act within the meaning of the Treaties. In accordance with Article 289(3) TFEU and 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 a special legislative procedure.
13. This is not the case for the legal act to which the requested document pertains, which is based on Article 215 TFEU. Article 215 TFEU does not refer to the ordinary legislative procedure nor to a special legislative procedure; this legal act is therefore not of a legislative nature.
14. The relevant parts of the document concern issues of private claims for damages and jurisdiction for those claims which the Council has judged necessary to regulate in the way it did in order to guarantee the effective application of the restrictive measures concerned.
15. As such, these provisions are strictly linked to the implementation of restrictive measures and aim to assure the effective application thereof. They cannot be isolated from the overall regime put in place, which would be less effective without them.

Article 4(1)(a) of Regulation (EC) No 1049/2001

16. After careful assessment of the parts of the document covered by the confirmatory application, the Council considers that they come within the remit of Article 4(1)(a), first and third indent, and Article 4(3), of Regulation (EC) No 1049/2001.

17. In this regard, 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.
18. 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”*.¹
19. 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”*.²
20. Therefore, while the Council enjoys a wide discretion in assessing the impact of the release of documents focused on public security or international relations, it is barred from taking into account other legitimate interests, such as those invoked by the applicant, that might override the conclusion that giving access to a document or parts of a document would harm the abovementioned protected interests.
21. In addition, according to settled case law, the risk of negative repercussions which disclosure of documents might entail for EU relations with third countries justifies the use of the exception under Article 4(1)(a), third indent of Regulation (EC) No 1049/2001³. 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*

¹ 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.

² 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.

³ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 41.

of those relations depend on that perception". This may therefore warrant the application of the exception concerned.⁴

22. If the Union were to publicly release information related to the internal negotiations and considerations concerning private claims for damages and jurisdiction for those claims related to the implementation of restrictive measures, such disclosure would reveal critical elements of the EU's strategy and potential future solutions which must be kept confidential in order to maintain the efficiency and the effectiveness of the EU action in respect of restrictive measures, which are a key tool of the Common Foreign and Security Policy. Furthermore, public release of the document would also allow third countries and persons and entities targeted by restrictive measures to gain insights into the operational processes of the Union, weakening the effectiveness of the international action of the Union. The disclosure of the requested document would thus undermine the protection of the public interest as regards international relations.
23. Concerning the protection of public security (Article 4(1)(a), first indent of Regulation (EC) No 1049/2001), it should be recalled that "*the concept covers both the internal security of a Member State and its external security*".⁵ In that sense, the threats posed by Russia's actions destabilising the situation in Ukraine addressed by the restrictive measures concerned clearly relate to public security.
24. 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 public security or of the European Union's international relations, but merely the existence of a reasonably foreseeable and not purely hypothetical risk⁶ for which, as previously recalled, the institution enjoys a margin of discretion.
25. 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 exceptions, the public disclosure of which would undermine the public interests protected by it.

⁴ Judgment of 27 February 2018, *CEE Bankwatch Network v Commission*, T-307/16, paragraphs 89-90.

⁵ Judgment of 17 June 1998, *Svenska Journalistförbundet v Council*, T-174/95, paragraph 121.

⁶ Judgment of 25 November 2020, *Bronckers v Commission*, T-166/19, EU:T:2020:557, paragraph 60.

26. Based on these criteria, the Council comes to the conclusion that the parts of the document covered by the confirmatory application cannot be released, because such disclosure would diminish the effectiveness of the application of the adopted restrictive measures.
27. Indeed, the Council has judged the provisions concerned by these parts of the document to be essential to the effective application of the restrictive measures taken. Release of a document revealing internal discussions around these provisions would reasonably foreseeably weaken the restrictive measures put in place.

Article 4(3) of Regulation (EC) No 1049/2001

28. Furthermore, the Council considers that the requested parts of document 8281/24 also fall within Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.
29. Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 provides that access to a document “drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure”.
30. The requested parts of document 8281/24 contain information relating to the adoption of restrictive measures in respect in view of Russia’s actions destabilising the situation in Ukraine that are ongoing. In particular, the document refers to the particularly sensitive issue of private claims for damages. The information contained in the requested document would reveal critical elements of the EU’s strategy that must be kept confidential in order to maintain the efficiency and the effectiveness of future measures to be adopted in this area.
31. In this context, work on additional restrictive measures is ongoing, as indicated in the European Council document of 18 December 2025 supported by 25 Heads of State or government.⁷ The release of information contained in the requested document would risk jeopardising the enactment of possible future measures and undermine the effectiveness of restrictive measures.

⁷ Document EUCO 26/25

32. In view of the above, the release of the requested document to the public would cause a reasonably foreseeable and not purely hypothetical prejudice to the protection of an ongoing decision-making process within the meaning of Article 4(3) of Regulation (EC) No 1049/2001.
33. The Council has assessed that there exists no public interest that would override the interests protected by the exception in this case.
34. This applies to all parts of the documents that are covered by the confirmatory application; therefore, no partial access, as provided for in Article 4(6) of Regulation (EC) No 1049/2001 can be given.

Document 8282/24

35. Only recital 25 (page 15) and paragraph 24 (pages 67 and 68) of this document are covered by the confirmatory application.
36. The Council has come to the conclusion that these parts of the document can be disclosed.

Document 10879/24

37. Only (the renumbered) recital 25 (page 14) and (the renumbered) paragraph 23 (page 51) of this document are covered by the confirmatory application.
38. The Council has come to the conclusion that these parts of the document can be disclosed.

Document 11357/24

39. Only recital 25 (page 16) and paragraph 24 (pages 68 and 69) of this document are covered by the confirmatory application.
40. The Council has come to the conclusion that these parts of the document can be disclosed.

Document 5461/25

41. Only recitals 30 to 32 (page 6) and paragraphs 23 to 25 (pages 19 and 20) of this document are covered by the confirmatory application.
42. The Council has come to the conclusion that these parts of the document can be disclosed.

Documents 6024/25 and 6024/1/25 REV 1

43. Only recitals 36 to 38 (pages 14 and 15) and paragraph 28, (the first) paragraph 29 and paragraph 30 (pages 58 to 60) of these documents are covered by the confirmatory application.
44. The Council has come to the conclusion that these parts of the documents can be disclosed.

Document 9124/25

45. Only recitals 16 to 19 (page 5) and paragraph 10 (page 11) of this document are covered by the confirmatory application.
46. The Council has come to the conclusion that these parts of the document can be disclosed.

CONCLUSION

47. Therefore, access to all requested parts of document 8281/24 must be refused, while access to the parts of documents 8282/24, 10879/24, 11357/24, 5461/25, 6024/25, 6024/1/25 REV 1 and 9124/25 covered by the confirmatory application can be provided.