

Brussels, 5 December 2025
(OR. en)

16433/25

API 145
INF 245

NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents - Confirmatory application N° 33/c/01/25

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 7 October 2025 and registered on 8 October 2025 (Annex 1);
- the reply from the General Secretariat of the Council dated 19 November 2025 (Annex 2);
- the confirmatory application dated 3 December 2025 and registered on 4 December 2025 (Annex 3).

From: document-request@cis.consilium.europa.eu <document-request@cis.consilium.europa.eu>
Sent: Tuesday, October 7, 2025 5:37 PM
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.

Title

DELETED

First name

DELETED

Family name

DELETED

E-mail

DELETED

Occupation

Academia

I submit this request on my own behalf.

Name of the organisation

Full postal address

DELETED

Telephone

DELETED

Requested document(s)

ST 9316 2020 DCL 1

ST 9316 2020 INIT

1st option

EN

2nd option

BG



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, 19 November 2025

Ms **DELETED**

E-mail: **DELETED**

Ref. 25/2872

Request made on: 07.10.2025

Registered on: 08.10.2025

Deadline extension: 29.10.2025

Dear **DELETED**,

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

We note that you requested documents **ST 9316 2020 DCL 1** and **ST 9316 2020 INIT**. We would like to draw your attention that document ST 9316 2020 DCL is the declassified version of document ST 9316 2020 INIT and their content is identical.

Please find attached a partially accessible version of document ST 9316 2020 DCL 1.² However, I regret to inform you that full access cannot be given for the reasons set out below.

You can have access to parts of the document which are not covered by any of the exceptions foreseen in Article 4 of Regulation (EC) No 1049/2001.

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).

² Article 4(6) of Regulation (EC) No 1049/2001.

First, the requested document contains personal data of the candidates for the appointment of the European Public Prosecutors. Therefore, it falls within the scope of the exception relating to the protection of privacy and the integrity of the individual (Article 4(1)(b) of Regulation (EC) No 1049/2001). The notion of personal data is interpreted broadly in the case-law of the Court.

Pursuant to Article 9 of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, "*personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if:*

(a) the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the recipient; or

(b) the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.

(...) Union institutions and bodies shall reconcile the right to the protection of personal data with the right of access to documents in accordance with Union law".

In your request you have not established the necessity of the transfer of the personal data contained in the requested document.

Redacted parts contain such personal data.

Second, the General Secretariat of the Council considers that full disclosure of the requested document is likely to cause harm to the reputation of the candidates and therefore would prejudice their legitimate interests.

After carefully considering all the principles related to this request, on balance the General Secretariat has concluded that disclosure of the personal data contained in the document would undermine the protection of privacy and the integrity of the identified individuals. As a consequence, the General Secretariat has to refuse full access to this document.³

Moreover, we also consider that full disclosure of the requested document would seriously undermine the decision-making process leading to the appointment of European Prosecutors (Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001). Additionally, Section IV of the Operating rules of the Selection Panel, annexed to Council [Implementing Decision \(EU\) 2018/1696](#), stipulates that "the deliberations of the panel shall be confidential and shall take place in camera", and disclosing some redacted parts would reveal the outcome of the confidential discussions of the Selection Panel. The publication of information with respect to the ranking by the Selection Panel concerning nominated candidates would affect the confidentiality of the assessment procedure. In this regard, it has to be recalled that the principle of the secrecy of the proceedings of independent Selection Panels and similar bodies is widely acknowledged in EU

³ Article 4(1)(b) of Regulation (EC) No 1049/2001.

law and finds its justification in the need to guaranteeing the independence of the assessment bodies and the objectivity of their proceedings, by protecting them from all external interference and pressures⁴.

Having examined the context in which the requested document was drafted, on balance the General Secretariat of the Council could not identify any evidence suggesting the existence of an overriding public interest in its full disclosure. As a consequence, the General Secretariat has to refuse full access to this document for this reason as well.⁵

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

Enclosure

⁴ See for instance in the domain of selection of personnel and Staff Regulations, judgment in *Gonzalo de Mendoza Asenti v European Commission* (Case F 127/11, ECLI:EU/F/2014:14, paragraph 93).

⁵ Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001.

From: DELETED

Sent: Wednesday, December 3, 2025 7:36 PM

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: RE: Ref. 25/2872 - Ares(2025)10014923

Dear Madam/Sir,

Please find attached my confirmatory application regarding the documents I requested.

Best regards,

DELETED

*To: Council of the European Union General
Secretariat
Directorate-General Communication and Information
Information Services Unit/Transparency
Ref. 25/2872*

CONFIRMATORY APPLICATION

Dear Mr Florindo,

I am writing to you regarding the Council's decision to allow me only partial access to document ST 9316 2020 DCL 1, which I requested on 07/10/2025. I requested this document in support of my academic research of the independence of the EPPO. The process of appointment of European Prosecutors is essential for my research.

According to your letter, the Council's claims to refuse me a full access to the requested document are, first, that the document contains personal data; second, that full disclosure would 'likely' harm the reputation of the candidates; and, third, that full disclosure would seriously undermine the decision-making process for the appointment of European Prosecutors. I would like herewith challenge these claims, pursuant to Article 7(2) of Regulation (EC) No 1049/2001.

The first claim – disclosure of personal data

In the document I received it seems that the following personal data have been redacted: the ranking of the three candidates proposed by Bulgaria for the position of a European Prosecutor; the name of one of the candidates; and data the character of which is hard to distinguish from the redacted document and I am therefore not able to comment on them.

I am availing myself of the opportunity, pursuant to Article 9 of Regulation (EU) 2018/1725 to argue that there is an overriding public interest in the disclosure of the names of candidates and their ranking for the following reasons.

First, the European Prosecutors play an important role in the EPPO. They are public servants with a responsibility to supervise the work of the European Delegated Prosecutors and to propose decisions in the Permanent Chamber they are part of.

¹ The Regulation also provides a possibility a Permanent Chamber to delegate to an EP its decision-making powers to bring a case to judgment or to dismiss a case.²

In addition, the EPs form an important layer within the EPPO's hybrid structure – the College. Its main task is to devise future strategies for the work of the EPPO. Even though decisions within the College are taken by a simple majority, having a voice on matters not all EPs are fluent in may have an impact.

Second, pursuant to Article 6 of the EPPO Regulation,³ there is a duty to guarantee the independence of the EPPO at all levels, including the European Prosecutors. Ensuring a transparent process of appointment is a way to achieve that. This is especially pertinent in light of the first disciplinary proceedings launched against a European Prosecutor.⁴

Third, the decision to suspend the Bulgarian European Prosecutor was based on concern about the integrity of the institution in the eyes of the public.⁵ Since the Council decided to not respect the ranking proposed by the selection committee,⁶ it is in the interest of the public to know the reasons behind this decision in order to assess whether the EPPO's independence may be at risk.

To conclude, the way a European Prosecutor was appointed, especially when the decision of the Council was against the proposal of the selection committee, represents an overriding public interest to have full access to documents that provide such information. The exceptions in Article 4⁷ are, according to the Court, to be applied strictly. The fact that a piece of information falls within the scope of this article does not suffice.⁸

The second claim – likelihood of harm of reputation

The Council is of the view that the full disclosure of the requested document 'is likely' to harm the reputation of the candidates, relying on the concept of legitimate interest. However, the Council has failed to explain in detail how specifically and actually the disclosure of the names of candidates for public positions, such as European Prosecutors, and their ranking, would harm their reputation and legitimate interests, as required by the case law of the Court of Justice.⁹

Moreover, any risks the Council deems likely must not be hypothetical but be 'reasonably

¹ 'Council Regulation (EU) 2017/1939 of 12 October 2017 Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office ('the EPPO')' art 12.

² *ibid* 10(7).

³ Council Regulation (EU) 2017/1939 of 12 October 2017 Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office ('the EPPO')' (n 1).

⁴ 'College of the EPPO Decides to Initiate Disciplinary Proceedings against the Bulgarian European Prosecutor | European Public Prosecutor's Office' <<https://www.eppo.europa.eu/en/media/news/college-eppo-decides-toinitiate-disciplinary-proceedings-against-bulgarian-european>> accessed 2 December 2025.

⁵ 'Wrath of Grapes' (POLITICO, 28 March 2025) <<https://www.politico.eu/newsletter/brussels-playbook/wrathof-grapes/>> accessed 2 December 2025.

⁶ General Secretariat of the Council, '9628/10 "I" ITEM NOTE EPPO-Council Implementing Decision Appointing the European Prosecutors of the European Prosecutor's Office' 5(14).

⁷ 'Regulation (EC) No 1049/2001 of the European Parliament and of the Council Regarding Public Access to Provisions Concerning Public Access to Council Documents'.

⁸ T-540/15 Emilio De Capitani v European Parliament, 22 March 2018 [2018] General Court (7th Chamber) ECLI:EU:T:2018:167 [61, 62].

⁹ *ibid* 62.

forseeable'.¹⁰ Therefore, I expect the Council to provide very specific analysis as to how the disclosure of the names of candidates and their ranking may harm their reputation.

¹⁰ *ibid*

Third claim – the full disclosure would undermine the decision-making process

The Council considers that the full disclosure of the requested document would ‘seriously undermine’ the decision-making process for the appointment of European Prosecutors. This is another exception on which the Council relies and for which the Court said must be interpreted strictly.¹¹ Such a reliance could be justified if the decision-making process were still ongoing, which is not the case.

The Council has a duty to demonstrate, by providing evidence, that the full disclosure of the requested document will, specifically and actually, seriously undermine the decision-making process of the appointment of European Prosecutors.¹²

I hope that with the above arguments I have managed to convince you of the necessity to disclose the requested personal data in line with Article 9 of Regulation (EU) 2018/1725.

Looking forward to your reply,
Kind regards,

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¹¹ ibid 61.

¹² ibid 111.