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**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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No. prev. doc.: 16494/25

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Subject: Public access to documents - Confirmatory application No 34/c/01/25

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Delegations will find attached a draft reply to confirmatory application No 34/c/01/25  
(see 16494/25).

**REPLY TO CONFIRMATORY APPLICATION 34/c/01/25  
made by email on 5 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 11 November 2025, the applicant submitted an initial application for access to Council documents related to the death of EU citizen József Sebestyén as a result of action taken by Ukrainian authorities and subsequent action taken by EU institutions.
2. On 4 December 2025, the General Secretariat of the Council (GSC) replied to the applicant, identifying documents WK 10489/2025 INIT, WK 10489/2025 ADD 1, WK 10489/2025 ADD 2, WK 10490/2025 INIT, WK 10490/2025 ADD 1, WK 10490/2025 ADD 2, WK 10491/2025, WK 10491/2025 INIT, WK 10491/2025 ADD 1 and WK 10491/2025 ADD 2, as well as Coreu messages CFSP/BUD/0018/25, CFSP/BUD/0019/25, CFSP/BUD/0020/25 and CFSP/SEC/0221/25. The WK documents contain evidence packages regarding envisaged restrictive measures. The Coreu message CFSP/SEC/0221/25 contains a report of the meeting of the Working Party on Human Rights (COHOM) of 27 August 2025. The remaining Coreu messages contain proposals for listings against three individuals. A minor part of Coreu message CFSP/SEC/0221/25 was released, the remainder, to the extent it was covered by the request, was withheld to protect public security (Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001), international relations (Article 4(1)(a), third indent, and the privacy and integrity of the persons concerned (Article 4(1)(b)).

3. On 5 December 2025, the applicant submitted the present confirmatory application, pursuing further access to the identified documents and arguing that not all information contained in the concerned documents is personal data; that, should the concerned individuals hold a public position, they would enjoy a lesser degree of protection of their privacy and integrity; and that a harm to international relations or the persons' rights of defence was not substantiated.

## THE APPLICABLE EXCEPTIONS

### Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001

4. The Council considers that the requested documents come within the remit of Article 4(1)(a) of Regulation (EC) No 1049/2001.
5. 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.
6. 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*”.<sup>1</sup>

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<sup>1</sup> 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.

7. 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*".<sup>2</sup>
8. Therefore, while the Council enjoys a wide discretion in assessing the impact of the release of documents focused on international relations, it is barred from taking into account other legitimate interests that might override the conclusion that giving access to a document or parts of a document would harm the abovementioned protected interest.
9. 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 the European Union's international relations, but merely the existence of a reasonably foreseeable and not purely hypothetical risk<sup>3</sup> for which, as previously recalled, the institution enjoys a margin of discretion.
10. 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 exception, the public disclosure of which would undermine the public interests protected by them.
11. Based on these criteria, the Council comes to the conclusion that the requested documents cannot be released, pursuant to Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 (protection of the public interest as regards international relations).

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<sup>2</sup> 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.

<sup>3</sup> Judgment of 25 November 2020, *Bronckers v Commission*, T-166/19, EU:T:2020:557, paragraph 60.

12. It should be noted that no restrictive measures in relation to the situation concerned have been taken until now. This means that the Council has not taken any final position in this regard.
13. While the identified WK documents draw on publicly available information, the selection and presentation of the evidence concerned allows to draw conclusions on the assessment made through these documents on the one hand and the difficulties in gathering such information on the other. This is all the more true for the reasoning developed in Coreu messages CFSP/BUD/0018/25, CFSP/BUD/0019/25 and CFSP/BUD/0020/25.
14. If the Union were to publicly release the information collected in this regard in the way it is presented in the requested documents, this would reveal critical elements of the EU's strategy and key information sources that 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 documents would also allow third countries and persons and entities targeted by restrictive measures to gain insights into the operational processes of the Union for gathering and assessing sources of information concerning such measures. This applies to cases where no restrictive measures have been taken (yet) just as much as to cases where such measure have been adopted. Such public knowledge of operational techniques and sources of information used by the Union and of the internal technical processes would weaken the effectiveness of the international action of the Union.
15. Such conclusions could also be drawn from the discussion in the working party, reflected in Coreu message CFSP/SEC/0221/25 which referred to the evidence set out in the evidence packs (the identified WK documents) and the evidence and arguments set out in the other Coreu messages.
16. The disclosure of the requested documents would thus undermine the protection of the public interest as regards international relations.

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

17. In addition, documents WK 10489/2025 INIT, WK 10489/2025 ADD 1, WK 10489/2025 ADD 2, WK 10490/2025 INIT, WK 10490/2025 ADD 1, WK 10490/2025 ADD 2, WK 10491/2025, WK 10491/2025 INIT, WK 10491/2025 ADD 1 and WK 10491/2025 ADD 2, as well as Coreu messages CFSP/BUD/0018/25, CFSP/BUD/0019/25, CFSP/BUD/0020/25 include personal data of various individuals. This information clearly falls within the scope of the exception relating to the protection of the privacy and the integrity of the individual in accordance with Union legislation regarding the protection of personal data (Article 4(1)(b) of Regulation (EC) No 1049/2001). Such Union legislation, as applicable to the Council, is contained in [Regulation \(EU\) No 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 (hereafter “Regulation (EU) No 2018/1725”).
18. In accordance with Article 3(1) of Regulation (EU) No 2018/1725, personal data is defined as “any information relating to an identified or identifiable natural person”. The Court of Justice has constantly rejected any attempt to interpret restrictively the notion at issue. It has, in particular, stressed that professional data or information provided as part of a professional activity may well be characterised as personal data<sup>4</sup>; it has also further stressed that the fact that some information has already been made public does not exclude its characterisation as personal data.<sup>5</sup>

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<sup>4</sup> See, among others, judgment of 19 September 2018 in Case T-39/17, *Port de Brest v Commission*, EU:T:2018:560, paragraphs 38 and 43.

<sup>5</sup> Judgment of 25 September 2018 in Joined Cases T-639/15 to T-666/15 and T-94/16, *Psara et al. v European Parliament*, EU:T:2018:602, paragraph 52.

19. According to established case law, when an application is made seeking access to personal data within the meaning of Article 3(1) of Regulation (EU) No 2018/1725, the provisions of that Regulation become applicable in their entirety<sup>6</sup>. More specifically, pursuant to Article 9(1)(b) of Regulation (EU) No 2018/1725, personal data may be transferred to recipients established in the Union only if two cumulative conditions are met. Firstly, the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest. Secondly, 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.
20. It is for the applicant to first establish the need to have the data transferred, the institution concerned not being obliged to verify itself whether reasons justifying the transfer of personal data exist.<sup>7</sup> In the case at hand, the applicant does not explicitly offer any such justification; he merely makes a difference between "purely private individuals" and "persons who hold public office and who, as a result, enjoy little protection of their privacy due to their status as public figures". This general assertion, however, cannot negate the fact that, as mentioned above, data protection extends beyond "purely private individuals" and also applies to information concerning a data subject's professional activity.
21. Furthermore, the persons mentioned or referred to in the requested documents are currently not subject to restrictive measures adopted by the Union. This means that the reality and gravity of the actions attributed to them has not even provisionally been determined. The public disclosure of the interest of the Council or its members in their activities in the context of restrictive measures would clearly be disproportionate.

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<sup>6</sup> Ibid., paragraph 63, regarding the predecessor of Regulation (EU) 2018/1725, Regulation (EC) No 45/2001.

<sup>7</sup> See, among others, judgment of 2 October 2014 in Case C-127/13, *Strack v Commission*, EU:C:2014:2250, paragraphs 106-107.

22. In view of the above, the release of the requested documents, except for the Coreu message CFSP/SEC/0221/25, to the public would cause a reasonably foreseeable and not purely hypothetical prejudice to the privacy and the integrity of the individuals concerned, in particular in accordance with Union legislation regarding the protection of personal data, an interest protected under Article 4(1)(b) of Regulation (EC) No 1049/2001.

### **NEW INITIAL APPLICATION**

23. In the message containing his confirmatory application, the applicant also submitted a new initial application for access to any correspondence with the Member State concerned regarding access to the documents subject to his initial application referenced above under point 1. The applicant has received a reply from the GSC to that new initial application on 7 January 2026.

### **PARTIAL ACCESS**

24. The Council has also verified whether (further) partial access could be given to the requested documents pursuant to Article 4(6) of Regulation (EC) No 1049/2001. It has however come to the conclusion that the exceptions set out above apply to all remaining parts of Coreu message CFSP/SEC/0221/25 covered by the request and that each of the other requested documents constitutes an inseparable whole.

### **CONCLUSION**

25. Therefore, no access can be given to the requested documents beyond the partial access given to Coreu message CFSP/SEC/0221/25 in the initial phase.