



Council of the
European Union

**Brussels, 13 December 2023
(OR. en)**

16748/23

**API 186
INF 275**

NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Public access to documents - Confirmatory application No 38/c/01/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 23 October 2023 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 15 November 2023 (Annex 2);
- the confirmatory application dated 29 November 2023 and registered on the same day (Annex 3).

From: document-request@consilium.europa.eu <document-request@consilium.europa.eu>

Sent: Monday, October 23, 2023 12:19 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.

Form of address

DELETED

Family name

DELETED

First name

DELETED

E-mail

DELETED

Occupation

Law firm

I submit this request as a representative of an organisation.

Name of the organisation

DELETED

Full postal address

DELETED

Telephone

DELETED

Requested document(s)

We respectfully request production of the following documents:

- (1) WK 7409/2021 REV 1; and
- (2) WK 7409/2021 REV 1 ADD 1

referred to at paragraph 11 of the Judgment of the General Court (Fifth Chamber) dated 06 September 2023 in the case of Mikail Safarbekovich Gutseriev -v- Council of the European Union (Case T-526/21).

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, 15 November 2023

DELETED

E-mail: **DELETED**

Ref. 23/3023-vl/nb

Request made on: 23.10.2023

Dear Mr **DELETED**

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

I regret to inform you that access to documents **WK 7409/2021 REV 1 + REV 1 ADD 1** cannot be given for the reasons set out below.

The requested documents were drawn up by the European External Action Service (EEAS) for the Working Party of Foreign Relations Counsellors and the Working Party on Eastern Europe and Central Asia. They contain underlying/supporting evidence for restrictive measures containing underlying/supporting evidence concerning Belarusian persons in the context of EU's restrictive measures.

These two documents contain information collected from different sources, serving as the basis for the proposals for Council Decisions in this field, submitted by the EEAS, and joint proposals for implementing Council Regulations, submitted by the EEAS and the European Commission, which

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).

constitute third-party documents within the meaning of Article 4(4) of Regulation (EC) No 1049/2001.

When the EU imposes autonomous restrictive measures⁵, it often acts in close cooperation with a number of international partners, including through mutual sharing of evidence. If the Union were to publicly release such confidential information to the public, this would not only complicate coordination in this field, but also and in particular undermine the mutual confidence between the EU and the originating sources, putting at a concrete risk (not hypothetical) the focus of ongoing investigations and significantly weakening the effectiveness of its decision-making procedures.

Hence, regrettably access to documents **WK 7409/2021 REV 1 + REV 1 ADD 1** must be refused as their disclosure would undermine public interest as regards international relations.²

We have also looked into the possibility of releasing parts of these two documents.³ However, as the information contained therein forms an inseparable whole, 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

² Article 4(1)(a), first, second and third indent of Regulation (EC) No 1049/2001.

³ Article 4(6) of Regulation (EC) No 1049/2001.

[REDACTED]

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

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

By Email Only

For the attention of Fernando Florindo (Head of Unit)

Our ref.: [REDACTED]
Your ref.: 23/3023-vl/nb

29 November 2023

Dear Sir,

Access to documents WK 7409/2021 REV 1 + REV 1 ADD 1

We write in response to your letter of 15 November 2023 rejecting our request for access to documents **WK 7409/2021 REV 1 + REV 1 ADD 1** (the "Requested Documents").

Please construe this letter as a request to the Council to review their decision pursuant to Article 7(2) of Regulation (EC) No 1049/2001.

By way of background, we are [REDACTED] in relation to legal proceedings in the English High Court against [REDACTED]. These proceedings were commenced by our client [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

We are aware of the Judgment of the General Court (Fifth Chamber) dated 06 September 2023 in the case of Mikail Safarbekovich Gutseriev -v- Council of the European Union (Case T 526/21) (the "EU Judgment") [REDACTED]

In the EU Judgment, the General Court (Fifth Chamber) make reference to the Requested Documents. In particular, we draw the Council's attention to paragraphs 11, 80, 84, 85, 87, 95, 117, 118, 120, 123, 125, 127 and 133 of the EU Judgment. It should be noted by the Council that, in the EU Judgment, the

[REDACTED] a limited liability partnership registered and is authorised and regulated by the Solicitors Regulation Authority

[REDACTED]

contents of the Requested Documents are explicitly mentioned [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In fact, almost all of the paragraphs in the EU Judgment which reference the Requested Documents discuss the contents of the Requested Documents in great detail. The basis for the Council's decision to reject our request for access to the Requested Documents was said to be that "*if the Union were to publicly release such confidential information to the public, this would not only complicate coordination in this field, but also and in particular undermine the mutual confidence between the EU and the originating sources*". However, it appears to us that the Union has already publicly released such information by way of the EU Judgment and therefore the Council's decision to reject our request does not hold up to scrutiny.

Respectfully, with reference to the above, it also appears to us that the Council's basis for rejecting our request in the first instance does not sufficiently explain how access to the Requested Documents specifically and actually undermines the Council's legitimate interests. In this respect, we refer the Council to paragraph 64 of the judgment in Case C-365/12 P.

In these circumstances, we respectfully invite the Council to review their decision not to grant us full access to the Requested Documents.

In the unfortunate event that full access to the Requested Documents is again denied by the Council, we respectfully request that access to all parts of the Requested Documents which are referred to in the EU Judgment are provided to us.

Yours faithfully,

[REDACTED]

[REDACTED]