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(OR. en)

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LIMITE

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INF 19

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application N° 03/c/01/26 - Draft reply

Delegations will find attached a draft reply to confirmatory application No 03/c/01/26
(see 5574/26).

REPLY TO CONFIRMATORY APPLICATION 03/c/01/26**made by registered letter dated 13 January 2026****received and registered on 15 January 2026****A. INTRODUCTION**

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 and Annex II to the [Council's Rules of Procedure](#) and has come to the following conclusion.

1. On 1st December 2025, the Applicant submitted a request for public access to the following documents:
 1. Copies of the documents contained in the Interinstitutional File: 2022/0289 (NLE)
 2. Copies of the documents relating to the meetings held by the Council's Working Party on Energy on the Proposal for a Council Regulation to address high energy prices, notably the following meetings:
 - Meeting of 15 September 2022 where the Commission presented the first official proposal of Council Regulation to the Working Party on Energy.
 - Meeting of 26 September 2022 where the second revision of the proposal for a Council Regulation was discussed by the Working Party on Energy.
2. On 6 January 2026, the General Secretariat of the Council replied to this request by:
 - referring the Applicant to the reply sent to him earlier under reference 25/3687 concerning the documents requested under the first point of his request (as these documents were already requested in this previous request);
 - providing him with documents CM 4312/22, ST 12249/22, CM 4475/22 and ST 12422/22 while refusing access to document WK 12077/2022 INIT pursuant to Article 4(2), second indent of Regulation (EC) No 1049/2001 concerning point 2 of his request.

3. Document WK 12077/2022 INIT is a Working Document of 15 September 2022 which contains Commission's presentations on the EU solidarity contribution and measures concerning the electricity market which were presented during the meeting of the Working Party on Energy on 15 September 2022.
4. Following the initial application for access to this document, the Commission, author of this document, was consulted on its possible disclosure and considered that access should be refused based on the need to protect court proceedings and legal advice pursuant to Article 4(2), second indent of Regulation (EC) No 1049/2001. The Commission pointed out that Regulation (EU) 2022/1854, to which the requested document refers, is currently subject to ongoing litigation before the EU courts and arbitration tribunals, that litigation involving the Council and the Commission.
5. On 15 January 2026, the General Secretariat of the Council received a confirmatory application from the Applicant asking the Council to grant full (or at least partial) access to document WK 12077/2022 INIT.
6. In his confirmatory application, the Applicant claims that the mere existence of litigation does not, without more, establish a concrete and reasonably foreseeable risk of specific harm arising from disclosure of the requested document. He also considers that the GSC's reply does not articulate how disclosure of these specific Commission presentations created in September 2022 for a Working Party discussion would adversely affect any later identified proceedings and how the nature of any privileged legal advice contained therein would be undermined by disclosure.

B. ASSESSMENT OF THE CONFIRMATORY APPLICATION UNDER REGULATION (EC) NO 1049/2001

7. The Council has carefully considered this confirmatory application and assessed, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and on account of the Applicant's arguments, whether public access can be provided to the requested document. The Council has come to the conclusions set out below.
8. Following the receipt of the confirmatory application, the Commission was re-consulted on the possibility of disclosing document WK 12077/2022 INIT and came to the conclusion that access could be granted to it.

9. Based on a renewed assessment, the Council concurs with the assessment of the Commission and concludes that the document can be disclosed.

C. CONCLUSION

10. The Council decides to grant full public access to document **WK 12077/2022 INIT.**
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