Council of the
European Union

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**NOTE**

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| From: | General Secretariat of the Council |
| To: | Working Party on Information |
| No. prev. doc.: | 6417/21 |
| Subject: | Public access to documents<br>- Confirmatory application No 07/c/01/21 |

Delegations will find attached a draft reply to confirmatory application No 07/c/01/21 (see 6417/21).

**ANNEX**

**DRAFT**

**REPLY ADOPTED BY THE COUNCIL ON …**

**TO CONFIRMATORY APPLICATION 07/c/01/21,**

**made by email on 23 February 2021,**

**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**

**for public access to document 5591/21**

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 (OJ L 145, 31.5.2001, p. 43) (hereafter referred to as "Regulation (EC) No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, OJ L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. On 9 February 2021, the applicant requested access to document 5591/21 (herafter the "requested document") which contains an opinion of the Council's Legal Service on the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (hereafter referred to as the "Agreement"). The opinion provides legal advice on the legal nature of the Agreement, related in particular with the question of exercise by the EU of its so-called potential competence and the consequential EU-only nature of the said agreement. More specifically, following an introductory part (paragraphs 1 to 3) and an overview of the factual and legal background (paragraphs 4 to 11), the opinion provides legal advice on the issue of the EU exercising its potential competence, on the issue of the EU-only nature of the Agreement and on the issue of the legal consequences for Member States of such an exercise of competences (paragraphs 12 to 43). It provides an assessment of whether the Trade and Cooperation Agreement could, in its view, be concluded as an EU-only agreement on the basis of Article 217 TFEU.

2. On 17 February 2021, the General Secretariat of the Council (GSC) replied to the applicant and granted access to paragraphs 1 to 3, to the first two sentences of paragraph 4, to paragraphs 5 to 8, to the first sentence of paragraph 9 as well as to paragraph 11 of the requested document. Access to the remaining parts of the document was refused pursuant to the third indent of Article 4(1)(a) and Articles 4(2) and (3) of Regulation (EC) No 1049/2001.

3. On 23 February 2021, the applicant submitted a confirmatory application asking the Council to reconsider the GSC's position (hereafter the "confirmatory application").

4. While partial access was already granted to certain parts of the requested document, the Council has carefully considered the confirmatory application as regards the remaining parts of the said document in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001.

**LEVEL OF TRANSPARENCY APPLICABLE TO THE REQUESTED DOCUMENT**

5. The legal advice contained in the requested document relates to a decision-making process of non-legislative nature, which is still ongoing. Indeed, on 25 December 2020, the Commission submitted its proposal for a Council decision on the conclusion of the Agreement. The issue analysed in the opinion has formed an important part of the basis for the political considerations in the Council as a result of which, so far, the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom, of the other part, agreed on the version of the Agreement published in the Official Journal of 31.12.2020 L 444 (p. 14–1462) and have notified the completion of the procedures necessary for its provisional application (see *Notice concerning the provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information and of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Atomic Energy Community for Cooperation on the Safe and Peaceful Uses of Nuclear Energy* (Official Journal of 1.1.2021, L 1, p. 1).

However, pursuant to Articles 217 and 218(6)(i), TFEU, it is only after obtaining the consent of the European Parliament that the Council shall adopt the decision concluding the Agreement and, as a consequence, will put an end to the ongoing process at issue.

6. The European Parliament has not yet given the consent on the draft Council Decision on conclusion of the Trade and Cooperation Agreement, nor has the Council adopted the Council Decision on conclusion. Thus, the procedure of conclusion of the said agreement is still ongoing.

7. In that regard, it must be underlined that both the Treaty on the European Union (Article 16(8)) and the Treaty on the Functioning of the European Union (Article 15(2) and (3)) make a distinction between legislative and non-legislative activities as regards the application of transparency rules, with particular emphasis on transparency in the context of legislative activities.

8. The requested document was however not drawn up in the context of legislative activities. Indeed, as underlined by the General Court[1], initiating and conducting negotiations in order to conclude an international agreement fall, in principle, within the domain of the executive, and public participation in the procedure relating to the negotiation and the conclusion of an international agreement is necessarily restricted, in view of the legitimate interest in not revealing strategic elements of the negotiations. Therefore, during that procedure, it must be held that the Council is not acting in its legislative capacity and, consequently, even if such documents falls within the scope of Regulation (EC) No 1049/2001[2], the wider access which is also referred to in recital 6 of the said Regulation is not relevant in the present circumstances.

9. It follows that the documents drawn up in the framework of the negotiation and the conclusion of an international agreement such as the one at issue do not require the same breadth of access to documents as the legislative activities of an EU institution[3].

10. The grounds of the confirmatory application must be examined in the light of those considerations.

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1 Judgments of 4 May 2012, In 't Veld v Council, T-529/09, EU:T:2012:21519, paragraph 88, and 19 March 2013, In't Veld/Commission, T-301/10, EU:T:2013:135, paragraph 120.

2 See judgment of 3 July 2014, Council v in 't Veld, C-350/12 P, EU:C:2014:2039, paragraph 107.

3 Judgment of 27 February 2015, Breyer v Commission, T-188/12, EU:T:2015:124, paragraph 70 and cited case-law.

**THE GROUNDS OF THE CONFIRMATORY APPLICATION**

a) The exception relating to the protection of the decision-making process (Article 4(3) of Regulation (EC) No 1049/2001)

11. In its confirmatory application, the applicant takes the view that the Council cannot rely anymore on the exception relating to the protection of the decision-making process under Article 4(3) of Regulation (EC) No 1049/2001 since the Agreement has been made available to the public through its publication to the Official Journal and is currently applied, albeit provisionally. Indeed, pursuant to Article 4(7) of the Regulation, the exceptions as laid down in paragraphs 1 to 3 of the said Article 4 shall only apply for the period during which protection is justified on the basis of the content of the document. The applicant underlines that the Agreement awaits only ratification process to be concluded whose remaining step consists merely in a public process which involves the European Parliament. Herewith, it would no longer be a matter of 'internal discussions' within the Council but of obtaining European Parliament's consent. Thus, the applicant takes the view that, instead of 'decision-making process', it would be more accurate to refer in the present case to the 'ongoing conclusion process'. Besides, it would be difficult to understand the logic of non-disclosure of the requested document since, by its decision to provisionally apply the Agreement, the Council has already approved the legal basis of the Agreement and thus has inevitably been convinced of the competences of the European Union to conclude the agreement as it stands. According to the applicant, the provisional application of the Agreement and the delay in concluding it do not find their causes in ongoing discussion within the Council but rather in the delays for translating the Agreement in all the official languages of the EU.

12. In that regard, the Council maintains that disclosure of the requested document would adversely affect deliberations within the Council and would hence undermine the decision-making process pursuant to Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001. Indeed, as long as the European Parliament does not provide its consent under Article 218(6)(a)(i) TFEU, the Agreement cannot be concluded by the Union. Contrary to what the applicant argues, the decision-making process within the Council is not terminated as long as the latter did not adopt a decision concluding the Agreement under the aforementioned provision of the TFEU. Likewise, it is not a given that the European Parliament will give its consent as it may question certain parts or provisions of the Agreement and even condition its consent to amendments or other commitments to be made by the United Kingdom in relation to the implementation of other agreements with the Union, notably the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland. Thus, in the meaning of Article 4(3), first subparagraph of Regulation (EC) No 1049/2001, the requested document "*relates to a matter where the decision [i.e. the decision to conclude the Agreement] has not been taken by the institution*" and, since the outcome of the decision-making process cannot be hold for granted, access in full to that document shall not be given.

b) The exception relating to the protection of the international relations (Article 4(1)(a), third indent of Regulation (EC) No 1049/2001)

13. The applicant contends that the GSC did not sufficiently explain how disclosure of the requested document would specifically and actually undermine the protection of the public interest as regards the international relations in the meaning of Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001. The applicant underlines that the CLS's opinion concerns the potential competence of the Union with regards to the Agreement and, thus, the choice of the appropriate legal basis to negotiate and further conclude that agreement. However, the choice of legal basis rests on objective factors and does not fall within the discretion of the EU institutions. As a consequence, relying on the paragraph 20 of the Judgement of 3 July 2014, Council v In 't Veld (C-350/12 P, EU:C:2014:2039), the applicant takes the view that the mere fear of disclosing a legal opinion regarding the legal basis of a decision authorising the concluding of the Agreement on behalf of the Union is not a sufficient basis to draw the conclusion that the protected public interest in the field of international relations may be undermined.

14. As a preliminary point, according to 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 different regime than the other exceptions included in Article 4.

15. On the one hand, "*the Council must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions relating to the public interest provided for in Article 4(1)(a) of Regulation (EC) No 1049/2001 could undermine the public interest*"[4].

16. On the other hand, and contrary to what the applicant puts forward by relying on the paragraph 93 of case C-350/12 – *which related to the "Arguments of the parties" and not to the "Findings of the Court"* –, once the Council has come to the conclusion that releasing a given document 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 (EC) 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"*.[5]

17. Therefore, while the Council enjoys a wide discretion in assessing the probable impact of the release of documents on international relations, it is barred from taking into account other legitimate interests that might override the conclusion that giving access to a document would harm the protected interest related to the protection of international relations[6].

4 Judgments of 1 February 2007, Sison v Council, C-266/05 P, ECLI:EU:C:2007:75, paragraph 34; Besselink v Council, T-331/11, EU:T:2013:419, paragraph 32, and Jurašinović v Council, T-63/10, EU:T:2012:516, paragraph 32.

5 Ibid and Judgments of 7 February 2018, Access Info Europe v Commission, T-851/16, EU:T:2018:69, paragraph 40, and Access Info Europe v Commission, T-852/16, EU:T:2018:71, paragraph 40 and the case-law cited.

6 Order of 20 May 2020, Nord Stream 2 v Parliament and Council, T-526/19, ECLI:EU:T:2020:210, paragraph 61 and the case-law cited.

18. In practice, in its answer to a confirmatory application, the institution must provide the applicant with plausible explanations as to how access to the documents at issue could specifically and actually undermine the protection of the EU's international relations and whether, in the institution's broad discretion in applying the exceptions in Article 4(1) of Regulation (EC) No 1049/2001, the risk of that undermining might be considered reasonably foreseeable and not purely hypothetical. In other words, 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[7] for which, as previously recalled, the institution enjoys a margin of discretion.

19. It is worth noting that the Court of Justice has held that the criteria set out in Article 4(1)(a) of Regulation (EC) No 1049/2001 are very general, since access must be refused, as is clear from the wording of that provision, if disclosure of the document concerned would 'undermine' the protection of the 'public interest' as regards, inter alia, 'public security' or 'international relations' and not only, as had been proposed during the legislative procedure which preceded the adoption of that regulation, when that protection has actually been 'significantly undermined'[8]. Besides, in the description of the document for the purpose of its answer, the institution cannot reveal its contain in further detail as doing so may disregard the scope of the interest protected by that provision[9].

20. In that regard, admittedly, in the aforementioned judgment Council v In 't Veld (C-350/12 P, EU:C:2014:2039), the Court held that the mere fear of disclosing a disagreement within the institutions regarding the legal basis of a decision authorising the opening of negotiations of an international agreement on behalf of the Union is not a sufficient basis for concluding that the protected public interest in the field of international relations may be undermined.

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

8 Judgments of 1 February 2007, Sison v Council, C- 266/05 P, EU:C:2007:75, paragraphs 36 to 38, and of 7 February 2018, Access Info Europe v Commission, T-851/16, T:2018:69, paragraph 39.

9 See, to that effect, judgments Besselink v Council, T-331/11, EU:T:2013:419, paragraph 106; of 7 February 2018, Access Info Europe v Commission, T-851/16, T:2018:69, paragraphs 41 and 49, and Access Info Europe v Commission, T-852/16, EU:T:2018:71, paragraphs 41 and 49.

21. However, in the present case, contrary to what the applicant puts forward, the fact that the content of the provisionally applied Agreement is agreed between the EU and the third country and published and/or the absence of need of a formal consent of the UK Parliament do not preclude the risk that the disclosure of the requested document would reveal the strategic interests and objectives pursued by the Union, and the constraints imposed to it, in negotiations on the partnership with the United Kingdom and, consequently, undermine the protection of the public interest as regards the international relations in the meaning of Article 4(1)(a) third indent of Regulation (EC) No 1049/2001. Indeed, the fact that the Agreement is agreed has no direct link with the content of the CLS's legal opinion which remains an internal document that was the basis on which the Council would decide whether it could conclude the agreement as an EU only agreement. Given that this is a choice that affects relations with third countries generally, the internal reflections by the Council on the legal parameters regarding the delimitation of competences between the Union and the Member States ought to be protected.

22. In that regard, the Agreement intervened in a specific and new context, namely in the aftermath of the withdrawal of a Member State from the European Union. In that context, the capacity of the EU to conduct the negotiations of the Agreement but also of the forthcoming similar ones with the United Kingdom, newly become a third country, would be affected if the latter would lose confidence in the capacity of the Union to be its exclusive counterpart in the area covered by the Agreement or by other ones, current or future, and for which the Member States, gathered within the Council, take a decision as regards the conclusion as an EU-only agreement.

23. In that regard, it should be recalled that the General Court held that "*the way in which the authorities of a third country perceived the decisions of the European Union [is] a component of the international relations established with that third country. Indeed, the pursuit and the quality of those relations depend on that perception*"[10].

[10] Judgments of 27 February 2018, CEE Bankwatch Network v Commission, T-307/16, EU:T:2018:97, paragraph 90, and of 25 November 2020, Bronckers v Commission, T-166/19, EU:T:2020:557, paragraph 61.

24. Moreover, in view of its subject-matter, disclosure of the requested document, containing legal advice, would reveal the issues with which the Council and its members were concerned at the time of the negotiations. Thus, disclosing the nature of their concerns would undermine the protection of the public interest as regards international relations under Article 4(1)(a), third indent of Regulation (EC) No 1049/2001 since those issues not only regard the relations with the UK to which the requested opinion directly pertained but also with other third countries – *especially for instance in the fields of Social Security Coordination and Air Transport* – in view of the broad nature of the questions discussed in the requested legal opinion that could apply to other international agreements. In that regard, the Court of Justice recognized that the disclosure of a legal opinion that would have revealed the legal considerations underpinning the institution's negotiating proposals in ongoing negotiations – *in the present case, the choice of having recourse to an EU-only agreement* – would weaken the institution's negotiating position by giving to the EU's negotiating partners an insider look into the European Union's strategy and negotiating margin of manoeuvre[11].

c) The exception relating to the protection of legal advice (Article 4(2), second indent of Regulation (EC) No 1049/2001)

25. The applicant challenges the nature of legal advice of the requested document. Indeed, the applicant relies on the assertions in paragraphs 2 and 3 of the requested document indicating that the legal opinion "does not provide an in-depth examination of all its aspects, nor does it provide a comprehensive and detailed competence analysis´ and that 'this opinion confirms and develops in writing the answers already provided orally by the CLS" to draw the conclusion that the said document does not qualify as a genuine legal advice in the meaning of Article 4(2), second indent of Regulation (EC) No 1049/2001. According to the applicant, an abstract and vague examination on the issue of the EU exercising externally its potential competence and the legal consequences of such an exercise of competences could not be reasonably construed as constituting legal advice.

[11] See, to that effect, judgment of 19 March 2020, ClientEarth v Commission, C-612/18 P, EU:C:2020:223, paragraphs 41 and 42.

26. Then, the applicant puts forward that the GSC relied in its reply to initial application on a purely hypothetical risk of litigation. According to the applicant, the fact that the issues addressed in the requested document are or not 'prone to litigation' could not be a lawful basis for invoking one of the exceptions foreseen in Article 4(2) and (3) of Regulation (EC) No 1049/2001. It would be contrary to the objectives of the Regulation (EC) No 1049/2001 and the second subparagraph of Article 1 TEU, if access to a document were always automatically refused on the grounds that it might potentially be the subject of or connected to legal proceedings at some point in the future. Relying on the General Court's judgment Miettinen v Council (T-395/13, EU:T:2015:648, paragraph 45), the applicant argues that the existence of hypothetical risk of court proceedings, the purpose and nature of which are not specified in the GSC's reply, cannot constitute an argument capable of rendering the requested document sensitive in its character either. Besides, the fact that the requested document deals with issues which are critical elements for the political discussions' and is "particularly prone to litigation" or the fact that it addresses horizontal issues that have broad implications going beyond the decision-making at issue does not allow to qualify that document as sensitive in the meaning of Article 9 of the Regulation (EC) No 1049/2001, and consequently, does not justify its non-disclosure. Indeed, only documents classified as "TRÈS SECRET/TOP SECRET", "SECRET" or "CONDIFENTIAL" fall within the scope of the said Article 9.

27. In that regard, the requested document, a legal opinion of the CLS, clearly contains legal advice in the meaning of Article 4(2), second indent of the Regulation (EC) No 1049/2001. Indeed, contrary to what the applicant argues, the cautious wording of paragraphs 2 and 3 of the requested document finds its justification in the fact that the requested document has been drafted in haste in order to substantiate the oral opinion already released by the CLS during a meeting between the Member States within the Council so as to enable the negotiations of the Agreement by 31 December 2020. In that regard, the General Court ruling on the legal opinion contained in simple emails held that the frankness, objectivity and comprehensiveness, as well as the expeditiousness of those legal consultations, given in a situation of urgency would have been affected if the drafters of those consultations, drafted in haste in order to lay the groundwork for meetings between officials of that institution and those of a Member State and a third State, had had to anticipate that such emails would be made available to the public[12].

[12] Judgment of 7 February 2018, Access Info Europe v Commission, T-852/16, EU:T:2018:71, paragraph 88.

This applies equally in the present case to the legal advice covered by the requested document, that cannot be revealed any further without undermining the different exceptions foreseen in Article 4 of Regulation (EC) No 1049/2001.

28. The said CLS's legal opinion deals with issues which are critical elements for the political discussions – *still ongoing as long as the European Parliament does not give its consent and as long as the Council does not adopt its decision to conclude the Agreement* – and that are particularly prone to litigation. Like it was the case with the withdrawal agreement[13], it cannot be excluded that the rights and obligations contained in the Agreement will not be the subject of a dispute. What is more, as already said by the GSC, the requested opinion touches upon horizontal issues (conclusion of EU-only agreements by the exercise by the EU of its potential EU competence, effects for the Member States of the exercise by the EU of its potential competence etc.) that have broad implications going beyond the decision-making process in question. For this reason, while not relying on the protection of "judicial proceedings" but on the protection of "legal advice" in the meaning of Article 4(2), second indent of the Regulation (EC) No 1049/2001, the Council reiterates that the legal advice given in the frame of the requested document is sensitive and particularly wide in scope.

29. Thus, disclosure of the remaining parts of the requested document would undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Conversely, if it has to anticipate that its opinion, such as the one at issue drafted in a context of a political and legal emergency characterized by the expiration on 31 December 2020 of the transition period foreseen in the UK-EU Withdrawal Agreement, would be released in a short-term and, all the more, while the decision-making process is still on going, the CLS may not fully play its role in advising the Council and be tempted to release only short and cryptic legal advice which would not serve its function and would run against the legitimate ability of the Council, especially where it has to act in emergency, to seek legal advice and receive frank, objective and comprehensive advice as recognized by standing case-

[13] See pending cases Shindler and others v Council (T-198/20); Price v Council (T-231/20); Silver and others v Council (T-252/20); Préfet du Gers et Institut National de la Statistique et des Études Économiques (C-673/20) and Institut National de la Statistique et des Études Économiques e.a. (C-32/21).

law[14]. This is not a general consideration since, contrary to the applicant's claim, the Council has in other cases accepted to release legal opinion even though when the decision-making process was ongoing, but such a decision of disclosure is based on the specific content of the requested document and its surrounding circumstances, which do not, in the present case, call for disclosure. Moreover, disclosure of the legal advice at issue could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts and, as already stated, it is expected that sooner or later the Agreement may be under scrutiny before the EU Courts. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences.

30. As for the applicant's reference to Article 9 of the Regulation (EC) No 1049/2001, the GSC did not rely on this provision to justify the refusal of the remaining parts of the requested document which, indeed, as such, do not fall within the scope of application of that provision. However, the sensitiveness of this document stems from the very nature of the legal advice provided for by the CLS and the institution can invoke and take into account this sensitiveness to justify, its assessment as regards the harm that disclosure would entail for the protection of legal advice under the second indent of Article 4(2) of the Regulation. The different interpretation suggested by the applicant would arbitrarily restrict the possibility for the institutions to refuse access to legal advice, only to those cases where the said advice would be contained in documents classified in accordance to the security rules of the institution concerned and does not correspond neither to the wording of the second indent of Article 4 (2) of the Regulation nor to the way this provision has been interpreted in the case-law.

[14] Judgment of 1 July 2008, *Sweden and Turco* v *Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 42.

d) Assessment of an overriding public interest in disclosure

31. The applicant underlines that the requested document has already sparked a lively debate after its disclosure on the Internet by a third party. However, as the Court of Justice held in its judgment of 21 January 2021, Leino-Sandberg v Parliament (C-761/18 P, EU:C:2021:52, paragraphs 47-49), this does not mean that an institution would be relieved of its obligation to grant access to the requested document. According to the applicant, the fact that the requested CLS opinion relates to a public, already provisionally applied international agreement between the EU and the United Kingdom which directly affects to the Union's citizens' life should be duly taken into account in the assessment of the existence of an overriding public interest in favour of the disclosure in full of the requested document.

32. As regards the existence of an overriding public interest in disclosure in relation to the protection of legal advice and the decision-making process under Articles 4 (2) and (3) of Regulation (EC) No 1049/2001 respectively and in so far as the exception related to the protection of international relations would not apply, the Council confirms for the sake of completeness that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interest so as to justify disclosure of the remaining parts of the requested document. Indeed, not only the decision-making process leading to the conclusion of the Agreement is still ongoing, but also the release of further parts of the document may reveal the nature of concerns of the Council and the Member states as regards the current and future relation with a former Member State and the legal tools at their disposal to legally frame this relation. Besides, the remaining parts of the requested document could affect the ability of the EU to be perceived as a reliable actor for the purpose of the negotiations of similar international agreements with UK but also with other third countries. Finally, the fact that the requested document has been uploaded on the Internet and made available to the Internet users without the prior consent of the Council does not affect the possibility for the latter to refuse access to that document under Regulation (EC) No 1049/2001 nor does it play a role in the assessment of the existence of an overriding public interest in disclosure. It is all the more so in the present case since the requested document has not be drawn up in the framework of legislative procedure for which an enhanced transparency is required by Article 15 TFEU and by Recital 6 of the Regulation (EC) No 1049/2001.

**CONCLUSION**

33. In the light of the above considerations, the Council confirms that access to the parts of document 5591/21 that have not been already made public should be refused pursuant to the third indent of Article 4(1)(a) (protection of the public interest as regards international relations) and to the second indent of Article 4(2) (protection of legal advice) and to the first subparagraph of Article 4(3) (protection of the internal ongoing decision-making process) of Regulation (EC) No 1049/2001.