

Brussels, 24 March 2025
(OR. en)

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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents
- Confirmatory application No 06/c/02/25

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 13 February 2025 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 6 March 2025 (Annex 2);
- the confirmatory application dated 21 March 2025 and registered on the same day (Annex 3).

From: DELETED

Sent: jeudi 13 février 2025 14:20

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

Subject: Consilium - Electronic Request for Access to documents [ENGLISH]

Form of address

DELETED

Family name

DELETED

First name

DELETED

E-mail

DELETED

Occupation

DELETED

Name of the organisation

DELETED

Full postal address

DELETED

Telephone

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Requested document(s)

1. WK 16312 2024 INIT with the name "UNOC3 declaration - Draft EU general statement and LTTs for first informal consultations - request for comments" dated 20/12/2024 with the link <http://webportal.consilium.eu.int/econsilium/documents/WK%2016312%202024%20INIT>

2. WK 15260 2024 INIT with the name "ISA and deep sea mining " dated 02/12/2024 with the link <http://webportal.consilium.eu.int/econsilium/documents/WK%2015260%202024%20INIT>

3. WK 15084 2024 INIT with the name "Revised proposal by Norway on OP201 -- Second round of informal consultations on the draft resolution on oceans and the law of the sea of the General Assembly at its seventyninth session", dated 27/11/2024 with the link <http://webportal.consilium.eu.int/econsilium/documents/WK%2015084%202024%20INIT>

4. WK 14427 2024 INIT with the name "UNOC3 - the finalized Input from the EU and its Member States", dated 15/11/2024 with the link <http://webportal.consilium.eu.int/econsilium/documents/WK%2014427%202024%20INIT>

5. WK 12280 2024 INIT with the name "COMAR AOB - Draghi Report and deep-sea mining", dated 02/10/2024 with the link

<http://webportal.consilium.eu.int/econsilium/documents/WK%2012280%202024%20INIT>

1st option

EN

2nd option

This is an automatic reply from the General Secretariat of the Council of the European Union concerning your request for access to Council documents.

This notification was sent from an unattended mailbox. Please do not reply.



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, 6 March 2025

DELETED

DELETED

Email: **DELETED**

Ref. 25/0450

Request made on: 13.02.2025

Dear **DELETED**,

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

Please find attached, as requested, document **WK 14427/2024 INIT**.

Please find also attached a partially accessible version of documents WK 12280/2024 INIT.²

However, I regret to inform you that full access cannot be given for the reasons set out below.

Document **WK 12280/2024 INIT** (dated 2 October 2024) consists of two parts. On the one hand (pages 1 and 2), the document contains a Member State's request for an AOB for an upcoming meeting on the Draghi report and its suggestions. On the other hand (pages 3 and 4), the document contains a letter from several NGOs addressed to the European Commission President von der Leyen regarding their concerns about Draghi's report and its references to deep-sea mining.

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.

More specifically, the information, contained in paragraphs 1 and 5 of pages 1 and 2 of the document, is particularly sensitive, highlighting a Member State's position regarding Draghi's report and its suggestions. Thus, releasing paragraphs 1 and 5 of pages 1 and 2 of the document would undermine the protection of international relations in the meaning of Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

After conducting a careful assessment of this request, the General Secretariat of the Council considers that full access cannot be granted to document WK 12280/2024 INIT pursuant to Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001. However, as abovementioned pursuant to Article 4(6) of Regulation (EC) No 1049/2001, access is given to paragraphs 2, 3 and 4 of pages 1 and 2, as well as to pages 3 and 4 of the document.

I regret to inform you that access to documents WK 15084/2024 INIT and WK 16312/2024 INIT cannot be given for the reasons set out here forth.

Document **WK 15084/2024 INIT** (dated 27 November 2024) is an Information Note from the General Secretariat of the Council to the Working Party on the Law of the Sea containing a revised proposal by Norway in view of the second round of informal consultations on the draft resolution on oceans and the law of the sea of the General Assembly at its seventy-ninth session which is particularly sensitive.

After conducting a careful assessment of this document, the General Secretariat of the Council considers that access cannot be granted to document WK 15084/2024 INIT as its disclosure would undermine the protection of international relations pursuant to Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

Document **WK 16312/2024 INIT** contains a request for comments on the Third United Nations Oceans Conference (UNOC3) declaration, as regards a draft EU general statement and lines to take for the first informal consultations. It consists of a first section containing the draft EU general statement for a negotiation meeting, and then the EU's suggested preliminary positions, as well as argumentation thereon, on the proposal of the co-facilitators.

This document is the EU's basis for the further negotiations on the UNOC3 declaration, with a view to the conference that takes place in Nice on 9-13 June 2025. Its disclosure would reveal the internal discussions taking place in the Council's preparatory bodies and would undermine the position of the EU and its Member States in this international forum. A release of the information contained in this document could therefore undermine the position of the EU vis-à-vis the other negotiating parties to the UNOC3 declaration.

In addition, given that this document forms the basis for the first informal consultations, it is a document that is set to evolve in tandem with discussions within the Council and further on in the corresponding international negotiations. A disclosure at this stage would expose the Council to external pressure that may seriously hinder or delay its decision-making process thereon.

As a consequence, the General Secretariat has to refuse access to this document³.

Having examined the context in which this document was drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in disclosure of the document in question.

We have also looked into the possibility of releasing parts of these two documents⁴. However, as the information contained in each of the documents forms an inseparable whole, the General Secretariat is unable to give partial access at this stage.

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

Enclosures: 2

³ Article 4(1)(a), third indent, and Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

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

From: **DELETED**

Sent: vendredi 21 mars 2025 14:08

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

Subject: RE: Ref. 25/0450

Dear Sir/Madam,

In conformity with Article 7(2) of Regulation (EC) No 1049/2001, I am writing to formally request the decision Ref. 25/0450 made 6.3.2025 to refuse partial and entire access to the following documents be changed so that the following documents would be disclosed in full:

1. Document WK 12280/2024 INIT (dated 2 October 2024): Pages 1 and 2 contain a Member State's request for an AOB for an upcoming meeting in the Working Party on the Law of the Sea on the Draghi report and its suggestions with respect to deep-sea mining. The Council has redacted the first two pages based on Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001, citing the protection of international relations.
2. Document WK 16312/2024 INIT (dated 20/12/2024): The document contains a request for comments on the Third United Nations Oceans Conference (UNOC3) declaration, as regards a draft EU general statement and lines to take for the first informal consultations. It consists of a first section containing the draft EU general statement for a negotiation meeting, and then the EU's suggested preliminary positions, as well as argumentation thereon, on the proposal of the co-facilitators. The Council perceives it as particularly sensitive and rejects entire access based on Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001, citing the protection of international relations.

It is our view that the refusal relies on a too broad application of the international relations exception without providing a concrete explanation of how disclosure would specifically and actually undermine international relations. The Council has not demonstrated that the risks are reasonably foreseeable and not merely hypothetical. It does not offer any explanation even as much as giving details as to whether the opinion contains negotiating strategy, strategic objectives, tactics or anything else that would fit the exclusion criterion.

The Aarhus Regulation (Regulation 1367/2006) establishes that when a document relates to emissions into the environment, the public interest served by disclosure should be taken into account. More specifically, the second sentence of Article 6 of the Aarhus Regulation provides that **all grounds for refusal** in Article 4 shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment. Several court rulings have demonstrated that the margin of refusal in these cases is limited (See for instance <https://curia.europa.eu/juris/document/document.jsf?jsessionid=8CD4E0EF242ABEB22D909737A9C16AFC?text=&docid=283785&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7219426>).

Document WK 12280/2024 INIT

This document meets the aforementioned criteria of the Aarhus Regulation as the negotiations within the ISA are inherently environmental in nature. There is wide recognition that deep-sea mining poses significant risks to marine ecosystems, including biodiversity loss, habitat destruction, and disruption of carbon sequestration processes (see for instance <https://easac.eu/publications/details/deep-sea-mining-assessing-evidence-on-future-needs-and-environmental-impacts>). Despite this, the ISA is working with the view on developing Rules, Regulations and Procedures (RRPs) on exploitation by July 2025, which would effectively greenlight the destructive activity to start. Moreover, an impending application of plan of work for exploitation in absence of such RRP's have triggered discussions on institutional readiness to combat aggressive industry tactics. Given the irreversible and far-reaching environmental consequences of deep-sea mining, transparency in decision-making is of paramount importance.

Any discussions on whether the EU should change its stance on deep-sea mining, as proposed by Draghi in his report that was the matter of discussion in the requested document, relate to an issue with potentially devastating effects on the marine environment. Considering that a representative of the Commission later made public a response on the matter (<https://seas-at-risk.org/general-news/european-commission-rejects-draghi-reports-call-for-deep-sea-mining/>) further demonstrates that the Commission believes the matter is of environmental character.

The EU and its Member States have consistently called for greater transparency within the ISA. They are also known to exercise transparency and openness in expressing their own views on the work and functioning of the ISA. It is therefore not clear how disclosures on these topics would weaken any negotiating position as the EU and its Member States. We therefore believe it is natural and not controversial that the EU and its Member States would uphold the same standards of openness, transparency and accountability that they advocate for internationally. Refusing access to this document in full rather risks undermining the EU's credibility on these fields.

WK 16312/2024 INIT

The information contained in this document concerns environmental governance and policy at the international level and meets the aforementioned provision in the Aarhus Regulation. The international governance of ocean has direct implications for environmental protection, marine biodiversity, and sustainable resource management. Public access to this information is essential to ensuring that EU decision-making aligns with environmental commitments and democratic accountability. The rejection of access to this document prevents the public from reviewing and ensuring the EU's accountability in its engagement in international negotiations. Unlike some international processes that allow for stakeholder participation, the negotiations on the UN Ocean Conference Declaration do not have formal public participation mechanisms. UN DESA has not indicated they would conduct any formal stakeholder analysis for these negotiations⁶, neither has any EU institution, making transparency the only tool available to civil society, researchers, media and the public to engage in meaningful oversight.

It is unclear why the Council perceives this document as particularly sensitive when similar negotiations have not faced such strict secrecy elsewhere. Many European countries routinely disclose their positions on environmental and governance issues in international negotiations without suffering diplomatic setbacks. The assertion that disclosure at this stage would expose the Council to external pressure suggests an overly broad interpretation of the risk posed by transparency. The rejected documents should only show the very first preliminary issues of interest ahead of any complex and delicate declaration negotiations. It is worth highlighting that public pressure on raising ambition of negotiations should not be seen as a reputational risk. Potentially perceived weaknesses in positions open up for the possibility of civil society to advocate for higher ambition, which is the very idea of the Aarhus convention (see also the Almaty Guidelines).

Furthermore, EU institutions are required to conduct a careful and reasoned assessment to determine whether at least some sections of the document can be released without harming protected interests. On this, the Council merely stated that the document "forms an inseparable whole" without demonstrating why disclosure of general or non-sensitive content would compromise the EU's international relations.

At the very least, we urge the Council to explore the possibility of granting partial access to non-sensitive portions of these documents.

We appreciate your attention to this matter and look forward to your response.

Yours sincerely,

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