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**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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No. prev. doc.: 7399/25

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Subject: Public access to documents  
- Confirmatory application No 06/c/02/25

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Delegations will find attached a draft reply to confirmatory application No 06/c/02/25  
(see 7399/25).

**REPLY TO CONFIRMATORY APPLICATION 06/c/02/25  
made by email on 21 March 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 (hereinafter referred to as “Regulation (EC) No 1049/2001”) and Annex II to the [Council’s Rules of Procedure](#) and has come to the following conclusion:

1. On 13 February 2025, the Applicant introduced a request for access to the following documents:
  - WK 16312/2024 INIT, entitled "UNOC3 declaration - Draft EU general statement and LTTs for first informal consultations - request for comments", issued on 20 December 2024;
  - WK 15260/2024 INIT, entitled "ISA and deep-sea mining ", issued on 2 December 2024<sup>1</sup>;
  - WK 15084/2024 INIT, entitled "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 seventy ninth session", issued on 27 November 2024;
  - WK 14427/2024 INIT, entitled "UNOC3 - the finalized Input from the EU and its Member States", issued on 15 November 2024;
  - WK 12280/2024 INIT, entitled "COMAR AOB - Draghi Report and deep-sea mining", issued on 2 October 2024.
2. This access request was registered by the General Secretariat of the Council (hereinafter the “GSC”) under reference number 25/0450.

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<sup>1</sup> Not included in this request as the applicant had asked for it in a previous one (ref. 25/0449).

3. On 6 March 2025, the GSC replied to the Applicant. Access was granted in full to document WK 14427/2024 INIT. Partial access was granted to WK 12280/2024 INIT, on the basis of the exception protecting the public interest as regards international relations (Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001). Access was refused to document WK 15084/2024 INIT on the basis of the exception protecting the public interest as regards international relations (Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001). Access was refused to document WK 16312/2024 INIT on the basis of the exceptions concerning the protection of the public interest as regards international relations (Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001) and ongoing decision-making (Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001).
4. On 21 March 2025, the Applicant introduced a confirmatory application asking the Council to reconsider its position (hereafter the “confirmatory application”) concerning the partial refusal of WK 12280/2024 INIT and the full refusal of WK 16312/2024 INIT. The Applicant considered 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 Applicant concluded that *“At the very least, we urge the Council to explore the possibility of granting partial access to non-sensitive portions of these documents.”*
5. The Council has carefully considered this confirmatory application. It has 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 documents.

## **ASSESSMENT OF THE REQUESTED DOCUMENTS UNDER REGULATION (EC)**

### **NO 1049/2001**

6. Article 4(1)(a), first and third indent, of Regulation (EC) No 1049/2001 provides that *“the institutions shall refuse access to a document where disclosure would undermine the protection of public security (...) and international relations”*.

7. 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.
8. 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>2</sup>
9. On the other hand, once the Council has come to the conclusion that any 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>3</sup>
10. Therefore, while the Council enjoys a wide discretion in assessing the impact of the release of documents having international relations implications, it is barred from taking into account other legitimate interests in order to override the conclusion that giving access to a document or parts of a document would harm the abovementioned protected interest.
11. 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 EU’s international relations, but merely the existence of a specific, actual, reasonably foreseeable and not purely hypothetical risk<sup>4</sup> for which, as previously recalled, the institution enjoys a margin of discretion.

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<sup>2</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.

<sup>3</sup> Judgment of 1 February 2007, *Sison v Council*, C-266/05, EU:C:2007:75, paragraph 46; and similarly judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 38.

<sup>4</sup> Judgment of 13 March 2024, *ClientEarth/Council*, T-682/21 and T-683/21, ECLI:EU:T:2024:165, paragraph 118 and similarly judgment of 25 November 2020, *Bronckers v Commission*, T-166/19, EU:T:2020:557, paragraph 60.

Document WK 12280/2024 INIT

12. The first requested document (WK 12280/2024 INIT) 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.
13. Having carefully scrutinized the content of the document concerned by the request and thoroughly assessed the confirmatory application, the Council has come to the conclusion that full disclosure of the document can be granted.

Document WK 16312/2024 INIT

14. The second requested document (WK 16312/2024 INIT) relates to the preparatory work towards the Third United Nations Oceans Conference (UNOC3), to be held in Nice on 9-13 June 2025.
15. The first section of the document contains the "DRAFT Intervention by the European Union and its Member States" at the presentation of the zero draft in New York on 17 January 2025. The second part of the document contains the matrix representing the changes and alternative wording by the EU in relation to the zero-draft concerning the UNOC3 declaration, to be agreed by the parties at the conference in June.
16. The Council notes that, since the GSC's first reply to the Applicant's initial request, the preparatory work towards UNOC3 has made important progress.
17. Having carefully scrutinized the content of the document concerned by the request and thoroughly assessed the confirmatory application, the Council has come to the conclusion that partial access to document WK 16312/2024 INIT can be granted at this stage, pursuant to Article 4(6) of Regulation (EU) No 1049/2001, since the abovementioned exceptions no longer apply to some parts of the document.

18. Nevertheless, certain passages contain suggestions made by the EU and its Member States, alongside the justifications and the proposed lines to take, all of which are highly sensitive in the context of international negotiation terms. These sections include fall-back positions of the EU, as well as strategic assessments of negotiations tactics and views on third countries, the revelation of which could seriously undermine the EU's negotiating position and its ability to conduct international relations, especially, but not exclusively in the upcoming UNOC3. These risks are concrete, actual, reasonably foreseeable and not purely hypothetical, and the release of the document would significantly compromise the EU's strategic approach and its effectiveness in the negotiations.
19. In addition, personal data related to the negotiating team can be found in this document. The disclosure of the personal data contained in the requested document does not meet the criteria set out in Article 9 of Regulation (EU) No 2018/1725, nor does it qualify as lawful processing under the requirements of Article 5 of the same Regulation.
20. For the sake of completeness, the Council has also taken into account the applicant's argument related to the Aarhus Regulation (EC) No 1367/2006, particularly the emphasis on transparency and the specific reference to emissions in the environment. The Council recalls that Article 3 of this Regulation does not preclude the possibility to rely on the exceptions set out in Article 4 of Regulation (EC) No 1049/2001 and maintains its position that only partial access to the document can be granted.
21. In the light of the above, based on its assessment, the Council considers that full disclosure of document WK 16312/2024 INIT cannot be granted, since it would undermine the protection of the public interest as regards international relations (Article 4(1)(a), third indent, of Regulation (EU) No 1049/2001), as well as 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 (EU) No 1049/2001).

## CONCLUSION

22. The Council therefore decides:

- to grant full access to document WK 12280/2024 INIT;
  - to grant partial access to document WK 16312/2024 INIT, whilst the remaining content must be refused on the ground of Article 4(1)(a), third indent (protection of the public interest as regards international relations), and Article 4(1)(b) (protection of privacy and integrity of the individual) of Regulation (EC) No 1049/2001.
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