



Brussels, 18 May 2026  
(OR. en)

7780/26

**LIMITE**

**API 64**  
**INF 88**

**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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No. prev. doc.: 7779/26

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Subject: Public access to documents - Confirmatory application N° 16/c/01/26  
- Draft reply

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Delegations will find attached a draft reply to confirmatory application No 16/c/01/26  
(see 7779/26).

REPLY TO CONFIRMATORY APPLICATION 16/c/01/26

made by email on 25 March, and registered on 26 March 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 21 January 2026, the Applicant submitted a request for public access to documents CM 1112/26 INIT, CM 1113/26 INIT, CM 1113/26 ADD 1 and WK 13481/2025 REV 2.
2. On 4 March 2026, the Applicant received a reply from the General Secretariat of the Council ('GSC'). In that reply, the applicant was informed that document CM 1112/26 had in the meantime become public and it is available in the public register of the Council. The other three documents could not be released; CM 1113/26 INIT and ADD 1 to protect the public interest with regard to international relations and WK 13481/2025 REV 2 to protect the decision-making process of the Council.
3. On 25 March 2026, the Applicant submitted a confirmatory application, registered on the day after. The applicant contested the arguments of the Secretariat and, in particular, he noted that *"the Council has not demonstrated that disclosure of the Requested Documents would seriously undermine its decision making process in the specific context of a procedure that is already closed"* and, as regards the exception of the public interest related to the international relations, he considered that the *"Council did not explained a specific, actual and non-hypothetical risk that allegedly exist in case of revealing these documents"*.

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

4. Following this confirmatory application, the Council has reassessed the GSC's reply to the initial request, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and considering the Applicant's comments.
5. Document CM 1113/26 INIT is the Communication to the delegations of the conclusion of the written procedure launched in the document [CM 1112/26](#) and contains the results of the vote in respect of the four questions put to the Members of the Council. Its Addendum, document CM 1113/26 ADD 1, includes three statements made by two members of the Council, to be included in the summary of the acts adopted by written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.
6. Document WK 13481/2025 REV 2 is a revised Presidency compromise, submitted to the Trade Policy Committee (Deputies), where this compromise was to be examined. It contains some highlighted modifications suggested by the Presidency of the Council to the Commission proposal for a Council Decision on the signing, on behalf of the European Union, of the Interim Agreement on Trade between the European Union, of the one part, and the Common Market of the South, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, of the other part.
7. Following this confirmatory application, the Council has reassessed the GSC's reply to the initial request, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and considering the Applicant's comments.
8. Following a renewed assessment of the contents of the documents and given the current circumstances after the approval of the Council Decision, the Council concludes that the documents CM 1113/26 INIT and WK 13481/2025 REV 2 can be disclosed.

9. However, the statement by France contained in document CM 1113/26 ADD 1 contains the reasons why this Member State has not supported the signature of the agreements concerned. These explanations are liable in particular to affect the international relationships of France with third countries but also the international relationships of the Union with third countries.
10. The Council therefore considers that document CM 1113/26 ADD 1 comes within the remit of Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 (protection of the public interest as regards international relations).
11. 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.
12. 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>1</sup>
13. On the other hand, once the Council has come to the conclusion that release would indeed undermine the public interest, 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>2</sup>

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<sup>1</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>2</sup> Judgment of 1 February 2007, *Sison v Council*, C-266/05 P, ECLI:EU:C:2007:75, paragraph 46; and similarly judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, ECLI:EU:T:2018:69, paragraph 38.

14. Therefore, while the Council enjoys wide discretion in assessing the impact of the release of documents focused on international relations, it is barred from taking into account other legitimate interests that might override the conclusion that giving access to a document or parts of a document would harm the above-mentioned interest.
15. 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 European Union's international relations, but merely the existence of a reasonably foreseeable and not purely hypothetical risk<sup>3</sup> for which, as previously recalled, the institution enjoys a margin of discretion.
16. It also results from the above that the Council has no choice but to refuse access to a document that falls within the scope of the above-mentioned exception, the public disclosure of which would undermine the public interest protected by it.
17. Based on these criteria, the Council comes to the conclusion that the requested documents cannot be released, pursuant to Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 (protection of the public interest as regards international relations).
18. The statement of France, as described above (point 9), contains sensitive information liable to affect the international relations of that Member State and of the Union with the four Mercosur countries (Argentina, Brazil, Paraguay and Uruguay). In the statement, France mentions the main reasons for its opposition to the signature of two EU-Mercosur agreements (the EU-Mercosur Partnership Agreement and the interim Trade Agreement) and draws attention to the challenges that the signing of these agreements represents for the Union. In this context, sensitive topics are mentioned. Consequently, the Council considers that disclosure of this document would reveal the specificities of the position supported by France and would risk undermining, in a reasonably foreseeable manner, the protection of the international relations of France and of the Union with the Mercosur countries. Therefore, the Council must refuse access to that statement.

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<sup>3</sup> Judgment of 25 November 2020, *Bronckers v Commission*, T-166/19, EU:T:2020:557, paragraph 60.

### **C. PARTIAL ACCESS**

19. The Council has also verified whether partial access could be given to document CM 1113/26 ADD 1 pursuant to Article 4(6) of Regulation (EC) No 1049/2001. Besides the above-mentioned statement by France, the document also contains two statements by Hungary. These parts of the document are not covered by any of the exceptions foreseen in Article 4 of Regulation (EC) No 1049/2001 and can therefore be granted access to.

### **D. CONCLUSION**

20. The Council decides to grant full public access to documents CM 1113/26 INIT and WK 13481/2025 REV 2, as well as partial access to document CM 1113/26 ADD 1.
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