

Brussels, 10 April 2025
(OR. en)

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INF 58

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 08/c/01/25

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 8 March 2025 and registered on 10 March 2025 (Annex 1);
- the reply from the General Secretariat of the Council dated 10 April 2025 (Annex 2);
- the confirmatory application dated 10 April 2025 and registered on the same day (Annex 3).

From: **DELETED** <ask+request-15697-5db3b8e8@asktheeu.org>
Sent: Saturday 8 March 2025 18:54
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Subject: access to documents request - Commission non-paper on a horizontal approach on common specifications complementary to harmonised European standards

Dear Council of the European Union,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

The document:

Commission non-paper on a horizontal approach on common specifications complementary to harmonised European standards WK 10046/22 LIMITE 08.07.2022

Yours faithfully,

DELETED



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, 10 April 2025

DELETED

Email: ask+request-15697-5db3b8e8@asktheeu.org

Ref. 25/0734

Request made on: 08.03.2025

Registered on: 10.03.2025

Deadline extension: 31.03.2025

Dear **DELETED**,

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

Please find attached a partially accessible version of document **WK 10046/22**.² However, I regret to inform you that full access cannot be given for the reasons set out below.

Document WK 10046/22 is a non-paper dated 8 July 2022 originating from the European Commission services. It contains information on a horizontal approach on common specifications complementary to harmonised European standards.

Having been consulted, as the author of the requested document, on its possible public disclosure, the Commission competent service has required the redaction of sections 3, 4, and 5 thereof. It justified this partial disclosure by the sensitive nature of the information they contain, which is directly related to a legislative process that is about to commence.

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.

In Commission's view, disclosing these sections would prematurely reveal legal advice, strategic considerations, and potential policy positions, thereby undermining the integrity of the decision-making process and potentially influencing the outcome of the legislative deliberations. By withholding this information at this stage, the aim is to preserve the ability of the legislative bodies to engage in unhindered and impartial discussions, free from external pressures or premature public scrutiny, ultimately ensuring that the legislative process unfolds in a fair, transparent, and effective manner.

Based on the above considerations, the General Secretariat of the Council has to refuse full access to the document in question, as such full disclosure would undermine the protection of legal advice.³

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

(Enclosure)

³ Article 4(2), second subparagraph, of Regulation (EC) No 1049/2001.

From: **DELETED** <ask+request-15697-5db3b8e8@asktheeu.org>

Sent: Thursday 10 April 2025 14:20

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

Subject: Internal review of access to documents request - Commission non-paper on a horizontal approach on common specifications complementary to harmonised European standards

Dear TRANSPARENCY Access to documents (COMM),

I have reason to believe these redactions are not in line with European law and request an internal review. I provide public information below to justify this claim. I argue that because the information in this document is broadly a description of publicly existing law, it cannot 'seriously undermine the institution's decision-making process'. It also does not relate to any specific future decision-making procedure, but relates to the legislative process more broadly at a high level. Given that all actions of the institutions of the Union are governed by the Treaties and its secondary legislation, it cannot be the case that any actions that refer to the actions of these bodies be refused simply because they reflect the legal operation of said institutions.

My understanding, without having access to the document, is the following:

Section 3, redacted, concerns the institutional situation which is common knowledge about the interaction of implementing acts and the requirements of comitology, as well as the stakeholders that are required to be informed by law. This information only relates to upcoming legislative procedures in the sense that all upcoming implementing acts are subject to the general approach required to be taken in law for implementing acts. This does not relate to a specific upcoming legislative procedure. It is a misuse of the exclusion in the law.

Section 4, redacted, concerns information which is public European law. See AI Act, Art 41, which states publicly (therefore is not acceptable to redact as it does not relate to an upcoming legislative process but a concluded one).

1. The Commission may adopt, implementing acts establishing common specifications for the requirements set out in Section 2 of this Chapter or, as applicable, for the obligations set out in Sections 2 and 3 of Chapter V where the following conditions have been fulfilled:
 - (a) the Commission has requested, pursuant to Article 10(1) of Regulation (EU) No 1025/2012, one or more European standardisation organisations to draft a harmonised standard for the requirements set out in Section 2 of this Chapter, or, as applicable, for the obligations set out in Sections 2 and 3 of Chapter V, and:
 - (i) the request has not been accepted by any of the European standardisation organisations; or
 - (ii) the harmonised standards addressing that request are not delivered within the deadline set in accordance with Article 10(1) of Regulation (EU) No 1025/2012; or
 - (iii) the relevant harmonised standards insufficiently address fundamental rights concerns; or
 - (iv) the harmonised standards do not comply with the request; and

(b) no reference to harmonised standards covering the requirements referred to in Section 2 of this Chapter or, as applicable, the obligations referred to in Sections 2 and 3 of Chapter V has been published in the Official Journal of the European Union in accordance with Regulation (EU) No 1025/2012, and no such reference is expected to be published within a reasonable period.

Note further Recital 121 which states

"The common specification should be an exceptional fall back solution to facilitate the provider's obligation to comply with the requirements of this Regulation, when the standardisation request has not been accepted by any of the European standardisation organisations, or when the relevant harmonised standards insufficiently address fundamental rights concerns, or when the harmonised standards do not comply with the request, or when there are delays in the adoption of an appropriate harmonised standard."

This is all public information.

My understanding of section 5 is that it concerns information publicly available in Article 41(2) of the EU AI Act which states

2. Before preparing a draft implementing act, the Commission shall inform the committee referred to in Article 22 of Regulation (EU) No 1025/2012 that it considers the conditions laid down in paragraph 1 of this Article to be fulfilled.

as well as Article 41(4)

4. Where a harmonised standard is adopted by a European standardisation organisation and proposed to the Commission for the publication of its reference in the Official Journal of the European Union, the Commission shall assess the harmonised standard in accordance with Regulation (EU) No 1025/2012. When reference to a harmonised standard is published in the Official Journal of the European Union, the Commission shall repeal the implementing acts referred to in paragraph 1, or parts thereof which cover the same requirements set out in Section 2 of this Chapter or, as applicable, the same obligations set out in Sections 2 and 3 of Chapter V.

Yours sincerely,

DELETED