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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	9103/26
Subject:	Public access to documents - Confirmatory application N° 26/c/02/26 - Draft reply

Delegations will find attached a draft reply to confirmatory application No 26/c/02/26
(see 9103/26).

REPLY TO CONFIRMATORY APPLICATION 26/c/02/26**made by email on 7 May 2026 and registered on the same day****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 19 March, the applicant submitted a request for public access to all documents, communications and text messages (SMS, iMessage, WhatsApp, Signal or similar) exchanged by the Council, or its officials, with other EU institutions or agencies, with the governments and/or institutions of EU Member States and non-EU countries, citizens and natural or legal persons, concerning the military presence of the United States of America on the territory of the Bolivarian Republic of Venezuela, and the removal of the President of the Republic, Mr Nicolás Maduro, and his wife, Ms Cilia Flores; all documents, communications and text messages (SMS, iMessage, WhatsApp, Signal or similar) exchanged by the Council with other EU institutions or agencies, with the governments and/or institutions of EU Member States and non-EU Member countries, citizens and natural or legal persons, concerning the amnesty law recently passed by the Venezuelan National Assembly on the categories of offences committed between April 2002 and the end of 2025.
2. The applicant explained that this request concerns both documents drawn up by the Council and documents it holds of the abovementioned nature received from third parties.
3. On 7 May, the General Secretariat of the Council (GSC) answered to the applicant, providing a partially accessible version of a document identified by the GSC as relevant for his request. Having duly consulted the European External Action Service (EEAS), the GSC granted a partial access to this document, informing the applicant that full disclosure of the information contained therein would undermine relations between the European Union and third countries (Article 4(1)(a), third indent, of Regulation No 1049/2001 - protection of the public interest as regards international relations).

4. On 7 May, the applicant submitted a confirmatory application requesting that the Council reconsider the request for access, assess the existence of additional documents, and grant full access to the document to which the GSC has granted partial access, on the grounds that the public interest outweighs the exceptions set out in Regulation (EC) No 1049/2001.
5. In his confirmatory application, the applicant did not invoke new arguments and referred to the ones invoked at initial stage. In its initial application, the applicant argued that the request is based “*on an overriding public interest*”, as it concerns documents and communications that have a significant institutional and geopolitical impact on the EU. The applicant argued that access to the documents is necessary to evaluate the conformity of the EU action with the principles enshrined in international law and EU law, as well as the Union’s ability to contribute to international stability and the protection of fundamental rights, and whether the Council has adopted measures for intervention, monitoring, or sanctions in accordance with its legal obligations, and to assess the implications that these events may have for the Union’s security, its international reputation, and the EU’s overall credibility within the multilateral system.

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

6. 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 confirmatory application.
7. Further to the confirmatory application, the Council has conducted a new analysis of the document covered by the initial request. The Council has also consulted again the EEAS, which provided relevant input to the GSC.
8. The Council has come to the conclusion that further partial access can be granted to the requested document. After new examination, the Council concludes that new elements in page 1 of the identified document can be released. They are included in the new partially accessible version of the document which is issued. However, the document cannot be fully released.
9. 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. The Council enjoys “*a wide discretion for the purpose of determining whether disclosure of a document to*

*the public would undermine the interests protected by that provision”.*¹ Consequently, once the Council has come to the conclusion that any release would 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”.*² Therefore, the Council enjoys a wide discretion in assessing the impact of the release of a document on international relations and 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 protected interest.

10. 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 risk³ for which, as previously recalled, the institution enjoys a margin of discretion.
11. In addition, according to settled case-law, the risk of negative repercussions which disclosure of documents might entail for the EU relations with third countries justifies the use of the exception under Article 4(1)(a), third indent of Regulation (EC) No 1049/2001⁴. Moreover, the way in which the authorities of a third country perceive the decisions of the EU is a component of the relations established with that third country, as *“the pursuit and the quality of those relations depend on that perception”*. This may therefore warrant the application of the exception concerned⁵.
12. The requested document is a document containing a compilation of open-source information, as well as GSC internal considerations related to the situation in Venezuela and the extraction of Mr. Maduro, and reports from the Delegation of the European Union to Venezuela

¹ 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

² 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.

³ Judgment of 13 March 2024, *ClientEarth v Council*, T-682/21 and T-683/21, 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.

⁴ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 41.

⁵ Judgment of 27 February 2018, *CEE Bankwatch Network v Commission*, T-307/16, paragraphs 89-90.

pertaining to the same topics. This includes references to publicly known events, relayed by the press, as well as internal assessments of the unfolding events.

13. The parts of the requested document that could not be released at the initial stage are politically sensitive as they reveal internal views concerning the events taking place in Venezuela and in the countries of the region (such as Cuba, Colombia and Mexico) in the period of concern.
14. More in detail, the document contains four sections: Section I “USA flash”, Section II “COLAC reports”, Section III “Read-out US information sharing”, and Section IV “EUDEL reports in our files”, containing three e-mails provided by the Delegation of the EU to Venezuela. COLAC is the acronym used for the Council’s Working Party on Latin America and the Caribbean. Section II of the document (COLAC reports) contains information which has been released and assessments regarding the positioning of the EU and some Member States on the events of concern. Disclosure of these assessments would affect the EU’s policy making abilities vis-à-vis third actors and would therefore harm the international relations of the EU.
15. Section IV of the document contains three e-mails from the Delegation of the European Union to Venezuela shared by the EEAS with the GSC. These emails contain internal assessments carried out by the EU delegation in Venezuela of the events taking place in the country in the relevant period. Due to the sensitivity of the topic addressed, to ensure the preservation of mutual trust, it is necessary to preserve the confidentiality of any such assessments. The content of these emails is too sensitive to be disclosed, either fully or partially, for the reasons outlined below
16. The first email, dated 3 January 2026, contains reporting, as well as assessments, including political forecasting, related to the taking of Nicolas Maduro and his wife to New York. This email equally contains monitoring of EU and Member States’ reactions at the time, as well as recommendations for EU policy-making in the future. The source of this information is, among others, media, social media, as well as military intelligence. The email equally contains considerations carried out by the EU delegations in Venezuela related to the domestic situation at the time, as well as to the relationship of Venezuela with one partner in the region. Release of the information contained in this email would prejudice relations

between the European Union and Venezuela, as well as between the European Union and the US, given its sensitive nature and the current geopolitical context.

17. The second email, dated 4 January 2026, contains assessments of the situation in Venezuela following the events on 3 January 2026. In particular, it contains an assessment conducted by the EU delegation in Venezuela of the “Amnesty Law” announced by the National Assembly in Venezuela. Release of the information contained therein would prejudice relations between the European Union and Venezuela, and between the European Union and the US, given its sensitive nature and the current geopolitical context.
18. The third email, dated 20 February 2026, contains reporting on the events in Venezuela unfolding end of February, more specifically the post-Maduro transitional framework. These considerations are of political nature and contain elements of political forecasting. Given their sensitive content, the email cannot be disclosed, as its disclosure would prejudice relations between the European Union and Venezuela, as well as between the European Union and the US and the other third countries referred to in the email.
19. The disclosure of the information mentioned above would negatively affect the international relations of the European Union with Venezuela, the US and other third countries. In some instances, even if the information contained in the requested document is in itself publicly available, the selection of such information and the internal assessments on it could be negatively perceived and could negatively affect the international relations of the EU with those countries. Due to the sensitivity of the topic addressed, which relates to the relationship between two third countries with which the EU has diplomatic relationships, to ensure the preservation of mutual trust, it is necessary to preserve the confidentiality of any such assessments. This entails a reasonably foreseeable and not purely hypothetical risk that the disclosure of the information contained in the requested document assessment would jeopardise the international relation between the EU and Venezuela, US and other third countries.
20. Based on these criteria, the Council concludes that broader partial access to the requested document can be given, but the document cannot be fully released.
21. Furthermore, the Council has again duly verified that there are no other documents in the databases it runs nor otherwise in the files held by its services, falling within the scope of the applicant’s request, other than the document that has been identified at initial stage. The

Council confirms that it does not hold any document – other than the one identified in the reply to the initial application – drawn up by the Council or received by it that falls within the scope of the request.

22. It is settled case-law that, where an institution states that a document does not exist in the context of an application for access, the non-existence of that document is presumed, in accordance with the presumption of veracity attaching to that statement.⁶ By virtue of that presumption, it would be incumbent upon the applicant to rebut the GSC's statement that it does not hold any such documents by producing relevant and consistent evidence that such documents could have existed.⁷
23. According to the case-law, rebutting the presumption involves showing that the institution was, at a given time, in possession of the documents requested.⁸ In this regard, the applicant is required to put forward "relevant and consistent evidence" capable of calling into question the institution's statement.⁹
24. The right of access to documents as enshrined in Article 2(3) of Regulation (EC) No 1049/2001 applies to all documents held by the institution, "*that is to say, documents drawn up by the institution or received by it and in its possession*". Regulation (EC) No 1049/2001 cannot oblige the institution to grant access to a document that is not in its possession¹⁰.
25. The Council reiterates that, following the case law from the Court of Justice, the institutions must, in so far as possible and in a non-arbitrary and predictable manner, draw up and retain documentation relating to their activities.¹¹ However, this obligation to draw up and retain documentation is not absolute - the Court found, for instance, that the purely informative nature of an item at a given meeting and the fact that it did not call for any specific

⁶ Judgments of the General Court of 14 May 2025 in case T-36/23, *Stevi and New York Times Company v. Commission*, EU:T:2025:483, paragraph 38, and of 20 September 2019 in case T-433/17, *Dehousse v Court of Justice of the European Union*, EU:T:2019:632, paragraph 36.

⁷ See judgment of the General Court of 25 September 2018 in cases T-639/15 to T-666/15 and T-94/16, *Psara et al. v European Parliament*, EU:T:2018:602, paragraphs 33 et seq., and the case law cited.

⁸ See judgment in *Stevi and New York Times Company v. Commission*, mentioned above, paragraphs 47 to 48 and 57 to 58.

⁹ See judgment of 25 September 2018 in joined cases T-639/15 to T-666/15 and T-94/16, *Psara et al v European Parliament*, above, paragraph 34 et seq.

¹⁰ Judgment of the General Court of 26 April 2016 in case T-221/08, *Strack v Commission*, EU:T:2016:242, paragraph 66.

¹¹ See judgment of the General Court of 25 April 2007 in case T-264/04, *WWF European Policy Programme v Council*, EU:T:2007:114, paragraph 61.

implementing measure explained why it was not considered necessary to minute it and why the item was not recorded in a summary report or other subsequent document.¹²

26. In this regard, the Council notes that the applicant merely requests the re-examination of this request and the assessment of the existence of additional documents, without relying upon any concrete evidence or arguments to the existence of possible additional documents. This does not constitute 'relevant and consistent evidence' able to rebut the general presumption of inexistence of the requested documents.

C. CONCLUSION

27. For the reasons set out above, the Council concludes that broader partial access to the document identified at initial stage can be granted, but full access is refused. Moreover, the Council confirms that it does not hold any documents which fall within the scope of the applicant's request other than the one already indicated to the applicant.

¹² Idem, paragraphs 62 and 63.