



Council of the
European Union

Brussels, 16 May 2023
(OR. en)

9444/23

INF 113
API 82

NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents
- Confirmatory application No 15/c/01/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 5 May 2023 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 11 May 2023 (Annex 2);
- the confirmatory application dated 15 May 2023 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Friday 5 May 2023, 10:42]

From: DELETED

Sent: vendredi 5 mai 2023 10:42

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

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

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application.

This electronic form has been submitted in ENGLISH.

Mr

Family name

DELETED

First name

DELETED

E-mail

DELETED

Occupation

Law firm

On behalf of

Full postal address

4/B Ugocsa utca, 1126 Budapest, Hungary

Telephone

DELETED

Mobile telephone

Fax

Requested document(s)

(1) letter of Mr. Zbynek Stanjura, Minister of Finance of the Czech Republic to the Commission dd. December 6, 2022

referenced in p.1 para 1 of the letter of Commissioner Hahn of 9 December 2022 to the Czech Presidency of the Council with an updated assessment of the remedial measures (the “Commission’s Updated Assessment”)

(2) letter of the presidency of the Council to the Commission dd. December 6, 2022

referenced in p.2 para 4 Commission’s Updated Assessment

(3) minutes of the meeting of ECOFIN of December 6, 2022, the agenda of which included a discussion on the measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary

referenced in p.1 para 1 Commission's Updated Assessment

(4) information provided by Hungary to the Commission on certain remedial measures dd. November 24, 2022

referenced in pp. 13-15 Commission's Updated Assessment

(5) information provided by Hungary to the Commission on certain remedial measures dd. December 2, 2022

referenced in pp. 13-15 Commission's Updated Assessment

(6) information provided by Hungary to the Commission on certain remedial measures dd. December 6, 2022

referenced in pp. 13-15 Commission's Updated Assessment

(7) information provided by Hungary to the Commission on certain remedial measures dd. December 9, 2022

referenced in pp. 13-15 Commission's Updated Assessment

(8) minutes of the meeting of Coreper II of September 21, 2022, where Hungary requested the Council to consider a two-month extension of the deadline for the Council to act

referenced in p.2 last para ST 13207/22: an 'I/A' item note of 7 October 2022 from the General Secretariat of the Council (GSC) to the Permanent Representatives Committee (COREPER) on an Extension of the one-month period concerning the Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary

(9) minutes of the meeting of the Budget Committee of September 22, 2022, where the Committee examined the Commission's proposal and the Hungarian request for the extension of the deadline for the Council to act

referenced in p.3 para 1 ST 13207/22: an 'I/A' item note of 7 October 2022 from the General Secretariat of the Council (GSC) to the Permanent Representatives Committee (COREPER) on an Extension of the one-month period concerning the Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary

(10) minutes of the meeting of the Budget Committee of September 28, 2022, where the Committee examined the Commission's proposal and the Hungarian request for the extension of the deadline for the Council to act

referenced in p.3 para 1 ST 13207/22: an 'I/A' item note of 7 October 2022 from the General Secretariat of the Council (GSC) to the Permanent Representatives Committee (COREPER) on an Extension of the one-month period concerning the Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary

(11) Study on concentration of awards and potential risks of fraud, corruption and conflict of interest in public procurement procedures in Hungary with focus on EU funded public procurements - Empirical analysis of Hungarian public procurement data from 2005 to 2021 (prepared by the Corruption Research Center, Budapest)

referenced in footnote no. 17 of the intention letter sent by the Commission to Hungary on July 20, 2022 in line with Art. 6(7) of the Conditionality Regulation

Note: References are for your convenience only.



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, 11 May 2023

DELETED

Email: **DELETED**

Ref. 23/1349-ws/el

Request made on: 05.05.2023

Dear **DELETED**,

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

The following documents covered by your request are held by the Council:

➤ ad (1) and (2) of your request: **WK 17294/2022 INIT**

You will find this document enclosed, only redacted² for the signature of Minister Stanjura, which is protected as personal data. Indeed, taking into account all the principles concerned and making up the balance between the public interest in having access to such data and the legitimate right of individuals to protect their personal data, the General Secretariat of the Council (GSC) has come to the conclusion that the signature has to be withheld.³

➤ ad (3) of your request: **15693/1/22 REV 1** and **15693/22 ADD 1**

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.

³ Article 4(1)(b) of Regulation (EC) No 1049/2001 and Article 9 of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (OJ L 295 21.11.2018, p. 39).

You will find these documents enclosed. Please note that these minutes have been approved by the Permanent Representatives Committee (Coreper) at its meeting of 15 and 17 February 2023 (see document **6594/23**, equally enclosed).

- ad (8) of your request: Please note that no minutes are drafted for Coreper meetings. Instead “summary records” are circulated. You will find the summary record for the meeting concerned enclosed (document **13206/22**).

Please note that there are no minutes, outcome of proceedings or other kind of report concerning the meetings of 22 and 28 September 2022 of the Budget Committee.

The Council does not hold any of the other documents mentioned in your request. In this regard, as already indicated in our email of 5 May 2023, you may wish to address a request for access to the European Commission.

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: 5

[E-mail message sent to access@consilium.europa.eu on Monday, 15 May 2023, 13:02]

From: **DELETED**

Sent: lundi 15 mai 2023 13:02

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

Cc: **DELETED**

Subject: Confirmatory application for access to documents (Ref. 23/1349-ws/el)

NAGY & TRÓCSÁNYI

DELETED

Nagy és Trócsányi Ügyvédi Iroda

H-1126 Budapest, Ugozca utca 4/B

tel: 36 1 487 **DELETED**

fax: 36 1 487 8701

email: **DELETED**@nt.hu

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May 15, 2023

Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Rue de la Loi/Wetstraat
175 - B-1048 Brussels

submitted via email: access@consilium.europa.eu

Subject: Confirmatory application for access to documents

Dear Council of the European Union, dear Mr. Florindo,

I officially submitted an application for access to documents under the terms of the 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 (the "**Regulation**") to the Council of the European Union on May 5, 2023. In my aforementioned application, I have requested access to 11 pcs of documents.

I have received your response on May 11, 2023 with the reference number of "Ref. 23/1349-ws/ef". You provided access to 5 pcs of documents attached to your response, these documents cover points (1), (2), (3) and (8) of my application.

Otherwise, you noted that you cannot provide access to the documents referenced in points (9) and (10) of my application by stating that "*there are no minutes, outcome of proceedings or other kind of report concerning the meetings of 22 and 28 September 2022 of the Budget Committee*".

As to the other requested documents, you stated that "*[t]he Council does not hold any of the other documents mentioned in your request. In this regard, as already indicated in our email of 5 May 2023, you may wish to address a request for access to the European Commission.*".

I cannot accept your response and your partial refusal, therefore I hereby submit this confirmatory application under Art. 7(2) of the Regulation asking the Council to reconsider its position for the following reasons:

With respect to the documents allegedly not held by the Council, I refer to Art. 2(1) and Art. 2(3) of the Regulation:

"(1) Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

(3) This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union."

According to the above-cited provisions, institutions shall provide access to those documents as well, which were not drawn up by the given institution but received by it for any reason. The Council adopted the Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary (the "**Implementing Decision**") based on the recommendations, proposals and documents received from the European Commission. Therefore, I assume that the Council received and assessed every related document before the adoption of the Implementing Decision.

NAGY & TRÓCSÁNYI

As to the requested minutes of the Budget Committee, I argue that even if there are no formal minutes or reports of the concerned meetings, there must be at least some notes on the decisions adopted by the Budget Committee, from where its opinion can be learned.

Therefore, I maintain my application for documents sent to you on May 5, 2023 as to the documents to which access has been refused and I hereby submit this confirmatory application to request the Council to reconsider its position.

As provided for in Art. 10(1) Regulation, I request to have access to the documents referred to in my original application submitted on May 5, 2023 in the original language by receiving them in electronic copy in Word or PDF format by email to [REDACTED]@nt.hu.

The cost of producing and sending copies may be charged to the applicant as follows:

name: Nagy és Trócsányi Ügyvédi Iroda
address: 4/B Úgocsa utca, 1126 Budapest, Hungary
HU tax ID No: 28293925-2-43
EU VAT No: HU28293925

Should you have any question in connection with the above or otherwise, please call direct at [REDACTED] or write to [REDACTED]@nt.hu.

Sincerely,

[REDACTED]

[REDACTED]
attorney at law in Budapest
