Brussels,

By e-mail

Ms Junie Estaphania Losse

ask+request-14309-97d64f17@asktheeu.org

Subject: Request for access to documents
Ref.: Your request of 29 February 2024 registered under reference 2024/1157.

Dear Ms Losse,

I refer to your application under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, by which you request access to “documents which contain the following information: Written observations of Venezuela and the Council in the Judgment - 13/09/2023 - Venezuela v Council Case T-65/18 RENV”.

1. IDENTIFICATION OF THE DOCUMENTS

After examination of the Legal Service’s files, the Council’s Statement of Defence has been identified as matching the terms of your request.

2. COUNCIL’S REFUSAL

The Commission has consulted the Council in accordance with Article 4(4) of Regulation (EC) No 1049/2001 on the disclosure of its submission.

Following this consultation, the Council has informed the Commission that it refuses access to its Statement of Defence, considering that it is covered by the exceptions provided for in Article 4(1)(a), third indent, (“protection of the public interests as regards international relations”) and Article 4(2), second indent, (“protection of legal advice”) of Regulation (EC) No 1049/2001, as will be explained below.

2.1. Protection of the public interest as regards international relations

According to Article 4(1)(a), third indent of Regulation (EC) No 1049/2001 “the institutions shall refuse access to a document where disclosure would undermine the public interest as regards the protection of international relations”.

As far as the protection of international relations is concerned, the EU Courts have acknowledged that the institutions enjoy a wide discretion when considering whether access to a document may undermine that public interest.

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The Council indicated that disclosure of the submissions in case T-65/18 RENV would reveal the way in which it considers and adopts restrictive measures with regard to the situation in third countries, in this case Venezuela.

In these circumstances, disclosure of the requested document is susceptible to negatively affect the Union’s international relations. In view of the foregoing, I conclude that the document requested must be protected under the exception related to the protection of the public interest as regards international relations.

2.2. Protection of legal advice

Article 4(2), second indent, states by way of exception that "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] legal advice [...] unless there is an overriding public interest in disclosure".

The Council considers that disclosure of the document requested would undermine the protection of legal advice, which, as recognised by the Court of Justice, represents an exception that must be construed as aiming to protect an institution's interest in seeking legal advice and receiving frank, objective and comprehensive advice.

The Council indicates that case T-65/18 RENV is the first case in the history of restrictive measures of the Union in which a third State, Venezuela, brought an action against the Council for annulment of the restrictive measures taken. The requested document was drawn up for the purposes of legal proceedings before the Union courts and contains a legal assessment of the merits of the case brought by Venezuela.

Moreover, the Council invokes the fact that the requested document contains throughout legal opinions which are informed by the particular nature of the procedure concerned and must be protected, because its disclosure would seriously undermine the protection of legal advice.

In the light of the above, I consider that the document requested must be protected and needs to remain confidential, in accordance with the exception for the protection of legal advice, laid down in Article 4(2), second indent, of Regulation (EC) No 1049/2001.

3. POSSIBILITY OF GRANTING PARTIAL ACCESS

As laid down in Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting partial access to the document requested. However, after careful examination, I have come to the conclusion that it is entirely covered by the exceptions invoked so that a partial disclosure cannot be granted without harming the interests protected.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Pursuant to Article 4(2) of Regulation (EC) No 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosure. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. in this case it must outweigh the interest protected under Article 4(2) second indent, of Regulation (EC) No 1049/2001. In the present case, I see no elements capable of showing the existence of an overriding public interest in disclosure of the refused document that would outweigh the public interest in the protection of legal advice.

Please note that the exceptions under Article 4(1)(a), third indent does not envisage the possibility of demonstrating the existence of an overriding public interest under Regulation (EC) No 1049/2001.

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Moreover, as regards Article 4(1)(a), third indent, the institution relying on this exception ‘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’.

5. **Means of Redress**

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

[signed electronically]
Daniel CALLEJA

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