



EUROPEAN COMMISSION
NEIGHBOURHOOD AND ENLARGEMENT NEGOTIATIONS

The acting Director-General

Brussels

**Subject: Your request for access to documents
GESTDEM 2022/2975**

Dear Mr Fanta,

I refer to your e-mail of 23 May 2022¹ in which you make a request for access to documents, registered on 24 May 2022 under the above-mentioned reference number². I also refer to our emails of 17³ June in which we explained that extended time limit is needed for the purpose of internal consultations.

You requested “*the answers sent by Ukraine to (...) the questionnaire sent by the European Union to Ukraine on membership*”.

Your application concerns the following documents:

1. Completed questionnaire submitted by Ukraine - Part I, 19 April 2022, Ares(2022)3072915
2. Completed questionnaire submitted by Ukraine - Part II , 10 May 2022, Ares(2022)3544141

Having examined these documents under the provisions of Regulation (EC) No 1049/2001⁴, I have decided that:

- Access must be refused to these two documents, as disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(a), third indent

¹ Ref. Ares(2022)3891130

² Ref. Ares(2022)3891279

³ Ref. Ares(2022)4487566

⁴ 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, Official Journal L 145 of 31 May 2001, p. 43.

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(protection of the public interest as regards international relations) of Regulation (EC) No 1049/2001.

Protection of the public interest as regards international relations

Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 provides that the *'institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations [...]'*.

As per settled case-law, the institutions *'must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the exceptions provided for in Article 4(1)(a) of Regulation 1049/2001] could undermine the public interest'*.

Consequently, *'the Court's review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exception [...] relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers'*.

The full public disclosure of the two completed questionnaires would be severely detrimental for the EU Institutions' relations with the EU Member States Governments and with the Ukrainian Government. The information in these questionnaires is entirely the property of Ukraine. It is the right of the Candidate country to decide whether to publish their answers. Publishing of the documents by the Commission would severely undermine trust of the Ukrainian Government in our Institutions. It is even more important given the geopolitical situation that Ukraine is facing. Moreover, the Commission was not publishing previous questionnaires received in the past from other countries.

Against this background, there is a risk that full disclosure of the two documents in question would undermine the protection of the public interest as regards international relations. I consider this risk as reasonably foreseeable and non-hypothetical, given the sensitivity of the issue and the relevance of the above-referred information in the current international context.

I would also like to underline that Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

Partial Access

We have considered whether partial access could be granted to the documents currently withheld but this was deemed impossible, as the sensitive elements are integral to them. Please note that we cannot provide you with more detailed information on these documents without disclosing their substance, which is protected by the quoted exception laid down in Article 4 of Regulation (EC) No 1049/2001.

Means of Redress

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission

General Secretariat

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,

[e-signed]

Maciej POPOWSKI