



Council of the European Union
General Secretariat

Directorate-General Communication and Information - COMM
The Director-General

Brussels, 28 June 2023
SGS 23 / 002577

Mr Emilio De Capitani
Email: ask+request-12611-a33c4ca6@asktheeu.org

Subject: Your Confirmatory Application 18/c/02/23

Dear Mr De Capitani,

Please find enclosed the reply from the Council to the confirmatory application you introduced on 22 May 2023, and which was registered by our service on the same day.

You will also find attached document WK 1899 2023 ADD1 to which the Council decided to grant full access.

Yours sincerely,



Agnieszka Bartol
Director-General

Enclosures: 2

**REPLY TO CONFIRMATORY APPLICATION 18/c/02/23,
made by email on 22 May 2023 and registered on the same day**

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 (OJ L 145, 31.5.2001, p. 43) (hereafter referred to as "Regulation (EC) No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, OJ L 325, 11.12.2009, p. 35) and has come to the following conclusion:

- Following an initial application made on the 13 March 2023, the applicant requested access to 37 WK documents distributed between 1 and 15 February 2023. In its replies dated 3rd and 27th April 2023 the General Secretariat of the Council ("GSC"):
 - a. provided full access to the following documents: **WK 847/2023, WK 1190/2023, WK 1227/2023, WK 1227/2023 REV 1, WK 1232/2023, WK 1591/2023, WK 1630/2023, WK 1760/2023, WK 1825/2023, WK 1825/2023 REV 1, WK 1935/2023, WK 2057/2023, WK 2057/2023 REV 1, WK 2185/2023, WK 2185/2023 ADD 1, WK 2213/2023, ST 5036/2023 REV 1, WK 843/2023, WK 843/2023 ADD 1, WK 843/2023 ADD 2, WK 1629/2023, WK 1629/2023 ADD1, WK 1814/2023, WK 1814/2023 ADD1, WK 1899/2023, WK 1141/23, WK 1141/23 ADD 1 and WK 4366/2023.**
 - b. granted partial access to the following documents: **WK 1912/23** for which full disclosure was refused on the basis of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 as it would undermine the protection of the public interest as regards public security and **WK 1899 2023 ADD1** in which a paragraph relating to an intervention of the Council Legal Service (CLS) was redacted on the basis of Article 4(2) second indent of Regulation (EC) No 1049/2001 (protection of legal advice).
 - c. informed the applicant that documents **WK 1236/2023 INIT, WK 1629/2023 COR1, WK 1706/2023** and **WK 1877/2023**, had never been issued as the competent services had reserved these numbers for documents which they had planned to issue but finally never drafted.

d. informed the applicant that document **WK 1505/23** had already been sent to the applicant previously in the context of another request for access to document (reference 23/0669).

- On 22 May 2023, the applicant submitted a confirmatory application asking the Council to reconsider the GSC's position (hereafter the “confirmatory application”), taking note of the security reasons preventing the Council from giving full access to document **WK 1912/23** but requesting full access to document **WK 1899 2023 ADD1**.
- Document **WK 1899 2023 ADD1** is a working document issued by the GSC to delegations in the Working Party on Social Questions in the context of the examination of the Proposal for a Directive on improving working conditions in platform work. The part of the requested document to which access was initially refused by the GSC contains a direct reference to an intervention of the CLS made in this context.
- In essence, in the present confirmatory application, the applicant argued that there was no “*general need for confidentiality as regards the opinions of the Council Legal Service*” and that Regulation (EC) No 1049/2001 imposes “*in principle, an obligation to disclose them*”. The applicant also considered that the “*sensitivity*” of the legal advice did not warrant the application of Article 4(2) second indent of Regulation (EC) No 1049/2001, in particular, in the case of a document issued in the context of a legislative procedure.
- The Council has carefully considered this confirmatory application, re-assessing, in full consideration of the principles underlying Regulation (EC) No 1049/2001 and on account of the Applicant’s arguments, whether full public access can be provided to document **WK 1899 2023 ADD1**.

ASSESSMENT OF THE REQUEST UNDER REGULATION (EC) NO 1049/2001

- Having thoroughly examined the document concerned in the light of the applicant's arguments, the Council has re-assessed the request for access in full consideration of the principles underlying Regulation (EC) No 1049/2001, including the aim of ensuring the widest possible public access to documents.
- The Council notes that, since the GSC’s first reply to the applicant’s initial request, the examination of the legislative file in the context of which the requested document was issued has made important progress. In this context, the part of the requested document can no longer be considered as sensitive and no longer falls within the scope of Article 4(2) second indent Regulation (EC) No 1049/2001. Consequently, document **WK 1899 2023 ADD1** may now be fully disclosed.

- This decision cannot constitute a precedent for a different approach as regards preparatory documents in the framework of a legislative process and is in line with the standard practice adopted by the Council in examining the content of each and every requested document in its own merit and carefully verifying the state of advancement of the files under scrutiny.

CONCLUSION

- For the reasons set out above, the Council concludes that full access can be granted at this stage to document **WK 1899 2023 ADD1**, since its content is no longer covered by any of the exceptions to disclosure in Regulation (EC) No 1049/2001.
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