



**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, 5 October 2023

Mr Davide Giovannelli  
Email: ask+request-13509-32453ab4@asktheeu.org

Ref. 23/2536-mj/el

Request made on: 14.09.2023

Dear Mr Giovannelli,

Thank you for your request for access to documents of the Council of the European Union.<sup>1</sup>

I regret to inform you that access to document WK 12708/2022 INIT cannot be given for the reasons set out below.

Document **WK 12708/2022 INIT**, dated 26 September 2022, is an information note from the General Secretariat of the Council to the Working Party on Public International Law containing a paper by Estonia in the context of discussions surrounding a research paper by the EEAS on "Third Party Countermeasures under International Law".

The General Secretariat of the Council has reached the conclusion that the content of this document cannot be disclosed as it would undermine the Union's international relations in the sense of Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

Indeed, the requested document contains elements relating to specific discussions on public international law issues which are particularly sensitive in the context of Russia's war of aggression against Ukraine. The disclosure of the requested document would risk undermining the Union's position in relation to third States.

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<sup>1</sup> 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).

In this regard, it should be recalled that, in accordance with well-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. In particular, the Court has held that: “*the Council must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions could undermine the public interest*” (see judgment of the Court of Justice of 1 February 2007 in case C-266/05 P, *Sison v Council*, paragraph 34, EU:C:2007:75.).

In addition, once the Council has come to the conclusion that the disclosure of a particular document would indeed undermine the public interest in the area of international relations, it has no choice but to refuse access to this particular document (see judgment in Case-266/05 P cited above, paragraph 46).

In view of the foregoing, the General Secretariat of the Council is under the obligation to refuse to grant you access to document WK 12708/2022 INIT, pursuant to Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

The General Secretariat of the Council has also assessed the possibility of releasing parts of the document pursuant to Article 4(6) of Regulation (EC) No 1049/2001. However, it has reached the conclusion that the aforementioned exception applies to the requested document as a whole.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).

Yours sincerely,

Fernando FLORINDO