



Council of the European Union
General Secretariat

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

Brussels, 16 December 2025

SGS 25/3580

Mr Alexander Fanta
Email: ask+request-16363-9d5d2d03@asktheeu.org

Subject: Your Confirmatory Application 30/c/05/25

Dear Mr Fanta,

Please find enclosed the reply from the Council to the confirmatory application you introduced on 12 November 2025, and which was registered on the same day.

If you wish to challenge this decision, you may do so pursuant to Article 8(1) of Regulation (EC) No 1049/2001 by instituting proceedings against the Council before the General Court of the European Union¹ or by making a complaint to the European Ombudsman².

Yours sincerely,

Preben AAMANN
Director-General

Enclosure

¹ For deadlines and other procedural requirements concerning the institution of proceedings at the General Court, please refer to the following page: http://curia.europa.eu/jcms/jcms/Jo2_7040/en/

² Any complaint to the Ombudsman must be made within two years of receiving the institution's final position on the matter. For more information, please refer to the [Ombudsman's website](#).

REPLY TO CONFIRMATORY APPLICATION 30/c/05/25

made by email on 12 November 2025 and registered on the same day

A. INTRODUCTION

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 and Annex II to the [Council's Rules of Procedure](#) and has come to the following conclusion:

1. On 20 October 2025, the Applicant introduced a request for access to the following documents:
 - WK 10247/2025 INIT: a request for contribution of 24 July 2025 from the General Secretariat of the Council to the Working Party on International Environment Issues (Global) WPIEI (Global) which contains a call for comments on the revised draft EU+MS scenario C for Article 6 (Sustainable production) for the INC-5.2 preparation;
 - WK 10284/2025 INIT: a consultation of 25 July 2025 from the General Secretariat of the Council to the Working Party on International Environment Issues (Global) on the INC-5.2 preparation. It concerns an informal silence procedure on the revised draft EU+MS scenario C for Article 6 (Sustainable production).
 - WK 10284/2025 ADD 1: an information note of 30 July 2025 from the General Secretariat of the Council to the Working Party on International Environment Issues (Global) on the INC-5.2 preparation. It concerns the end of informal silence procedure on the Revised draft EU+MS scenario C for Article 6 (Sustainable production).

as well as any document containing positions or views taken by the Austrian government.

2. On 10 November 2025, the General Secretariat of the Council (GSC) replied to the Applicant by:
 - granting full access to document WK 10284/2025 ADD 1;
 - partially disclosing documents WK 10247/2025 INIT and WK 10284/2025 on the ground of the protection of the public interest as regards international relations pursuant to Article 4(1)(a), third indent of Regulation (EC) No 1049/2001 (the Applicant was also informed that these two documents were redacted for personal data);¹
 - informing him that the GSC does not hold documents containing positions or view taken by the Austrian government on the INC-5.2.
3. On 12 November 2025, the Applicant introduced a confirmatory application asking the Council to review the GSC’s decision, claiming that the existence of a mere link between the elements contained in a document and the objectives pursued by the European Union in the negotiation of an international agreement “*is not sufficient to establish that disclosure of those elements would undermine the public interest protected as regards international relations*”.
4. The Council has carefully considered this confirmatory application and assessed, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and on account of the Applicant's arguments, whether public access can be provided to the requested documents. The Council has come to the conclusions set out below.

B. THE GENERAL CONTEXT OF THE NEGOTIATIONS ON INC

5. In March 2022, a resolution was adopted by the UN Environment Assembly (UNEA) to develop an international legally binding instrument on plastic pollution, including in the marine environment.

¹ See 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295 21.11.2018, p. 39).

6. The UNEA resolution 5/14 requested the Executive Director of the UN Environment Programme (UNEP) to convene an Intergovernmental Negotiating Committee (INC) to develop an internationally binding instrument on plastic pollution, including in the marine environment, which would be based on a comprehensive approach that addresses the full life cycle of plastic, including its production, design, and disposal (and many related issues).
7. The INC began its work in the second half of 2022. It has since convened its first session ([INC-1](#)) in Punta del Este, Uruguay (November–December 2022); its second session ([INC-2](#)) in Paris, France (May–June 2023); its third session ([INC-3](#)) in Nairobi, Kenya (November 2023); and its fourth session ([INC-4](#)) in Ottawa, Canada (April 2024). The fifth session has been held in parts: first, in Busan, Republic of Korea ([INC-5.1](#), November–December 2024) and then in Geneva, Switzerland ([INC-5.2](#), August 2025). The third part ([INC-5.3](#)) is now scheduled for 7 February 2026 in Geneva. The process is therefore still ongoing.

C. THE CONTENT OF THE REQUESTED DOCUMENTS

8. Documents **WK 10247/2025 INIT** and **WK 10284/2025 INIT** contain different scenarios on the EU negotiating position for Article 6 (Sustainable production) in view of the fifth session of the Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment (INC-5.2) which took place in Geneva from 5 to 15 August 2025. No agreement could be reached at this session and the negotiations should resume on 7 February 2026.
9. Article 6 is one of the most sensitive issues at the core of the treaty. Article 6 contains multiple elements and interlinkages with other articles of the treaty which affects the EU's positioning and strategy throughout the negotiations. As negotiations are dynamic processes, positions on individual articles should not be seen in isolation. Whilst negotiations are ongoing, positions are considered taking into account developments across the entire treaty text.

D. ASSESSMENT OF THE REQUESTED DOCUMENTS UNDER REGULATION (EC) NO 1049/2001

10. 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”*.
11. The Council recalls that, in accordance with the 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 4.²
12. In particular, the Court has recalled that *“in respect of the public interest exceptions provided for in Article 4(1)(a)”* of Regulation (EC) No 1049/2001, the Council must be recognised as *“enjoying a wide discretion for the purpose of determining whether disclosure of a document to the public would undermine the interests protected by that provision”*.³
13. Once the Council has come to the conclusion that any release would indeed undermine the public interest in this area, it has no choice but to refuse access, because *“it is clear from the wording of Article 4(1)(a) of Regulation No 1049/2001 that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests”*.⁴
14. Therefore, while the Council enjoys a wide discretion in assessing the impact of the release of documents having international relations implications, it is barred from taking into account other legitimate interests that might override the conclusion that giving access to a document or parts of a document would harm the abovementioned protected interest.⁵

² Order of 20 May 2020, *Nord Stream 2 v Parliament and Council*, T-526/19, paragraph 61 and the case-law cited

³ Judgments of 11 July 2018, *ClientEarth v Commission*, T-644/16, paragraph 25, and of 27 November 2019, *Izuzquiza and Semsrott v European Border and Coast Guard Agency (FRONTEX)*, T-31/18, paragraph 65.

⁴ Judgment of 1 February 2007, *Sison v Council*, C-266/05, paragraph 46; and similarly judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, paragraph 38.

⁵ Judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, paragraph 38 and the case-law cited.

15. According to the case-law, the risk of negative repercussions which disclosure of documents might entail for the EU's relations with the third countries justifies the use of the exception under Article 4(1)(a), third indent of Regulation (EC) No 1049/2001.⁶ Moreover, the way in which the authorities of a third country perceive the decisions of the EU is a component of the relations established with that third country, as "*the pursuit and the quality of those relations depend on that perception*". This may therefore warrant the application of the exception concerned⁷.
16. In addition, the General Court has already considered that the disclosure by the European Union, to the public, of its own negotiating positions is liable to have a negative effect on the negotiating position of the European Union⁸. In this sense, in a case where disclosure of a document would have risked upsetting the EU's negotiating position in international negotiations, the General Court found that the Council was right to consider that disclosure of such document would have entailed the risk of undermining the public interest as regards international relations under Article 4(1)(a), third indent of Regulation (EC) No 1049/2001⁹.
17. Besides, for the purpose of the assessment of a request for access to documents under Regulation (EC) No 1049/2001, it is not required to establish the existence of a definite risk of undermining the protection of the EU's international relations. The burden on the Council is to provide sufficient explanations as to the specific, actual, reasonably foreseeable and not purely hypothetical nature of the risk that public access would entail.¹⁰ For this, as previously recalled, the institution enjoys a margin of discretion.
18. It results from the above that the Council has no choice but to refuse access to a document that falls within the scope of the abovementioned exception, the public disclosure of which would undermine the public interest protected by it.

⁶ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 41.

⁷ Judgment of 27 February 2018, *CEE Bankwatch Network v Commission*, T-307/16, paragraphs 89-90.

⁸ Judgment of 19 March 2013, In 't Veld v Commission, T-301/10, paragraph 123-125.

⁹ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 41.

¹⁰ Judgment of 13 March 2024, *ClientEarth/Council*, T-682/21 and T-683/21, paragraph 118 and Judgment 25 November 2020, *Bronckers v Commission*, T-166/19, paragraph 60.

19. Disclosure of different scenarios on the EU negotiating position for Article 6 would undermine the EU's position and leverage in the ongoing negotiations. Moreover, the EU is considering its positioning for the next negotiation meeting based on the previous negotiations. Full release of the information contained in these documents could have a negative impact on the relations of the EU with the other negotiating parties at this stage. It risks misrepresenting the EU's position and flexibilities. Moreover, should its internal views and negotiation strategy be made public while negotiations are ongoing, the position of the Union in such international negotiations would be seriously weakened. This is the specific, actual, reasonably foreseeable and not purely hypothetical risk that disclosure of the requested documents would pose to the protected interest of international relations.
20. The Council has carefully assessed the content of documents WK 10247/2025 INIT and WK 10284/2025 INIT and has also looked into the possibility of releasing additional parts of these documents in line with Article 4(6) of Regulation (EC) No 1049/2001. On the basis of its assessment, it considers that the redacted parts of these documents cannot be disclosed, since their disclosure would undermine the protection of the public interest as regards international relations for the reasons explained above.
21. The Council also notes that the reference of the Applicant in his confirmatory application to "*legal opinions*" as well as his assertion that "*the fact that Member States' positions diverge is well-known*" are irrelevant as the requested documents are not legal opinions and do not contain differences between positions of Member States. On the contrary, they contain proposed negotiating positions of the EU+MS and agreed negotiating positions of the EU+MS on Article 6.
22. In the light of the above, the Council considers that full release of the requested documents would seriously undermine the public interest as regards international relations as it would seriously weaken the EU position in the upcoming session of the INC-5.3 negotiations.

E. CONCLUSION

23. The Council therefore considers that the no further access can be granted to documents WK 10247/2025 INIT and WK 10284/2025 INIT pursuant to Article 4(1)(a) third indent of Regulation (EC) No 1049/2001.
-