



Council of the European Union

General Secretariat

Directorate-General Communication and Information - COMM

The Director-General

Brussels, 8 October 2024

SGS 24/2613

Mr Friedrich Lindenberg
Email: ask+request-14845-1a1b6d20@asktheeu.org

Subject: Your confirmatory application 23/c/01/24

Dear Mr Lindenberg,

Please find enclosed the reply from the Council to the confirmatory application you introduced on 26 August 2024, and which was registered by our service 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,

Peter JAVORCIK
Acting Director-General

Enclosure: 1

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 23/c/01/24
made by email on 26 August 2024 and registered on the same day

The Council has considered this 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 (hereinafter referred to as “Regulation (EC) No 1049/2001”) and Annex II to the [Council’s Rules of Procedure](#), and has come to the following conclusion:

1. In its initial request on 26 July 2024, the Applicant requested access to a) any documents ¹ related to the process by which Council decisions regarding EU restrictive measures are included in the EU Financial Sanctions Files (FSF) structured data released by EEAS; b) recent delays in updating the FSF based on new designations; c) any internal discussion or discussion with third parties of the legality/possibility/practice of pursuing sanctions violations by financial institutions occurred after the publication of restrictive measures in the OJEU, but before their inclusion in the FSF.
2. In its reply to the applicant on 5 August, the General Secretariat informed the Applicant that, since the process of implementation of the restrictive measures belongs to the European Commission, the Council is not concerned by the hosting and maintenance of the EU Financial Sanctions Files (FSF) and does not hold any document in this regard. Therefore, it addressed the Applicant to the European Commission services and provided him with some relevant hyperlinks to the Commission and EEAS web sites dedicated to the matter.

¹ The Applicant referred to “[a]ny documents, memoranda or legal opinions”. All of these are “documents” in line with the wide definition of a “document” contained in Article 3 of Regulation 1049/2001.

3. In his confirmatory application on 26 August 2024, the Applicant “updated” his initial request by referring to any “*documents, e-mails, memoranda or legal opinions*” (emphasis added) and to “*structured data released by DG FISMA*” (emphasis added). The Applicant asked the Council to review the conclusion reached in reply to his initial request, claiming that “*the Council is clearly involved in the process*” and considering “*it likely that documents (e.g. e-mails, memoranda, legal assessments) relevant to this question exist within the Council*”.
4. At the outset, the Council observes that the scope of the initial application cannot be enlarged at the confirmatory stage.² However, regarding the first modification made by the Applicant, by which he added “e-mails” to his request, the Council observes that e-mails are covered by the term “documents” in line with the definition in Article 3 of Regulation 1049/2001. As for the second modification, which changed the reference to the entity releasing the EU Financial Sanctions Files (FSF) structured data from the EEAS to DG FISMA, this does not broaden the scope of the request, as the request refers to the same (and only) EU Financial Sanctions Files (FSF) structured data.
5. Moreover, the handling and publicity accorded to Financial Sanctions Files (FSF) via the dedicated tool is managed and hosted by the Commission.
6. Having re-consulted the competent policy directorate of the General Secretariat responsible for the restrictive measures, the Council confirms that it does not hold any documents requested by the Applicant which would relate to the handling of that tool, alleged delays or discussions about the legality/possibility/practice of pursuing sanctions violations by financial institutions occurred after the publication of restrictive measures in the OJEU, but before their inclusion in the FSF.

² See judgment of the General Court of 10 February 2021 in case T-488/18, *XC v European Commission*, EU:T:2018:488, paragraph 169.

7. By virtue of the presumption of legality attaching to EU acts, it would be incumbent on the Applicant to rebut the Council's statement in paragraphs 2 and 4 above that it does not hold any such documents (whether because it has not received them or because they do not exist, respectively³) by relevant and consistent evidence.⁴ In this regard, the Council notes that the Applicant does not attempt to do so and merely assumes that "*the Council is clearly involved in the process*", which is not the case, and considers without any further explanation "*it likely that documents (e.g. e-mails, memoranda, legal assessments) relevant to this question exist within the Council*". According to the case-law, however, such "relevant and consistent evidence", capable of putting into question the institution's statement, goes well beyond a mere 'belief' that the documents should exist⁵ or a mere suspicion that there must be more documents than the number identified⁶.
8. Finally, the Council observes that it has no obligation to create a document which it has been asked to grant access to but which does not exist.⁷

CONCLUSION

9. The Council therefore confirms that it does not hold any further documents covered by the application.

³ See judgment of the General Court of 11 June 2015 in case T-496/13, *McCullough v Cedefop*, EU:T:2015:374, paragraph 50.

⁴ See judgment of the General Court of 23 April 2018 in case T-468/16, *Verein Deutsche Sprache v Commission*, EU:T:2018:207, paragraph 35, and the case-law cited (judgment confirmed in the Order of the Court of Justice of 30 January 2019 in appeal case C-440/18P, *Verein Deutsche Sprache v Commission*, EU:C:2019:77, paragraph 14, and the case-law cited); judgment of the General Court of 25 September 2018 in joined cases T-639/15 to T-666/15 and T-94/16, *Psara et al. v European Parliament*, EU:T:2018:602, paragraph 33, and the case law cited.

⁵ See judgment of 25 September 2018 in joined cases T-639/15 to T-666/15 and T-94/16, *Psara et al. v European Parliament*, above, paragraph 34 et seq.

⁶ See judgment of 23 April 2018 in case T-468/16, *Verein Deutsche Sprache v Commission*, above, paragraph 37.

⁷ See judgment of the Court of Justice of 2 October 2014 in case C-127/13 P, *Strack v Commission*, EU:C:2014:2250, paragraph 46.