



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, 1 June 2023

Mr Andre Meister

Email: andre@netzpolitik.org

Ref. 23/1517-mj-adb/el

Request made on: 17.05.2023

Registered on: 22.05.2023

Dear Mr Meister,

Thank you for your request for access to documents of the Council of the European Union.¹

In addition to our email of 31 May 2023 concerning document 8833/23, please find below our reply concerning the other two requested documents.

Please find attached document 8268/23 that you requested.

I regret to inform you that access to document 8787/23 cannot be given for the reasons set out below.

Document **8787/23**, dated 26 April 2023, contains an opinion of the Council Legal Service (CLS) on the Proposal for a Regulation laying down rules to prevent and combat child sexual abuse.

This opinion analyses the conformity of the detection order applied to interpersonal communication services with Articles 7 and 8 of the Charter of Fundamental Rights. Thus, the requested document contains legal advice.

After conducting a careful assessment of the document concerned by this request, the General Secretariat of the Council (GSC) considers that full access to this document should be refused

¹ 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).

pursuant to Article 4(2), second indent (protection of legal advice), and Article 4(3), first subparagraph (protection of ongoing decision-making process), of Regulation (EC) No 1049/2001.

The legal advice in question deals with measures of cooperation between the Member States which are novel at EU level, particularly in an area of law which has seen limited adoption of common rules and thus with very divergent national legal systems, approaches and cultures.

Consequently, this opinion concerns particularly sensitive legal issues that are very controversial, divisive and complex for delegations. Full disclosure of the requested opinion could have important repercussions on the serenity of the ongoing negotiations and damage the mutual confidence which governs the work of the Council working groups. It would make known to the public an internal opinion of the CLS, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Therefore, giving access to this opinion would undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001.

Furthermore, the decision-making process to which this legal opinion relates has not ended, since the delegations are still adjusting their positions on this file. Given the sensitivity of the issues dealt with in the legal opinion, its full disclosure would concretely and effectively affect the ongoing discussions by further compromising the ability to reach a common ground within the Council and, in the future, with the co-legislator. Therefore, full access to the opinion should also be refused on the grounds of Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

As regards the existence of an overriding public interest in disclosure, the GSC considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interests so as to justify disclosure of the document.

In view of the foregoing, the GSC considers that full access to document 8787/23 should be refused.

The GSC has also assessed whether partial access could be granted to parts of the requested document, pursuant to Article 4(6) of Regulation (EC) No 1049/2001. However, the GSC has not been able to identify any parts which are not covered by the abovementioned exceptions.

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

Yours sincerely,

Fernando FLORINDO

Enclosure: 1