



**COUNCIL OF  
THE EUROPEAN UNION**

**GENERAL SECRETARIAT**

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Brussels, 23 -02- 2010

**Mr Piotr Trzaskowski  
ul. Nowy Swiat 57/59 lok. 14  
00-042 Warszawa  
POLAND**

SGS10 3290

**Ref. 04/c/01/10**

Dear Mr Trzaskowski,

Please find enclosed the reply from the Council to your confirmatory application dated 21 January 2010 as well as documents 6280/10 and 6281/10, the partially accessible versions of documents SEC/1351/08 and SEC/1407/09, which the Council decided to release.

Pursuant to Article 8(1) of Regulation (EC) No 1049/2001, we draw your attention to the possibility to institute proceedings against the Council before the General Court or to make a complaint to the Ombudsman. The conditions for doing so are laid down in Articles 228 and 263 of the Treaty on the Functioning of the European Union.

Yours sincerely,

Marc LEPOIVRE

Enclosures

**REPLY ADOPTED BY THE COUNCIL ON 22 FEBRUARY 2010  
TO CONFIRMATORY APPLICATION No 04/c/01/10  
made by e-mail on 25 January 2010,  
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,  
for public access to documents SEC/1351/08 and SEC/1407/09**

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 (OJ L 145 of 31.5.2001, p. 43) and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. The applicant refers to documents SEC/1351/08 and SEC/1407/09 which concern, respectively, the first and the second round of the human rights dialogue meeting between the European Union and Turkmenistan.
2. In its reply dated 6 January 2010, the General Secretariat refused public access to these documents pursuant to the third indent of Article 4, paragraph 1, of the Regulation (protection of the public interest with regard to international relations).
3. In his confirmatory application dated 25 January 2010, the applicant requests that the Council release the human rights part of the dialogue, claiming that "*the public benefit resulting from the disclosure of documents describing the human rights dialogue between Turkmenistan and the EU exceeds the potential harm for international relations between them*".
4. The Council has thoroughly examined the documents at the light of the applicant's arguments and carried out internal consultations to ascertain the applicability of the above-mentioned exception to the documents concerned. The Council has come to the conclusion set out below.

5. Documents SEC/1351/08 and SEC/1407/09 contain reports of, respectively, the first and the second round of the human rights dialogue meeting between the European Union and Turkmenistan which took place on 24 June 2008 and 30 June 2009. The documents set out details of the discussions held between the EU and Turkmenistan on a variety of human rights issues like, among others, freedom of expression, religion and movement as well as prison conditions and torture.

The Council considers that, given the sensitive content of the documents, their full release would hinder the EU's diplomatic efforts in order to maintain a constructive dialogue with Turkmenistan on the respect of human rights and to find constructive solutions in problematic situations related to human rights. If disclosed, the information contained in the documents would therefore also be detrimental to the good functioning of the relations between the EU and Turkmenistan.

6. Moreover, the documents contain personal data on the participants of the meetings in question. The General Secretariat did not obtain the explicit consent of all the persons concerned to the disclosure of their personal data, pursuant to Article 5, point d) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.
7. Full access to the documents under scrutiny must therefore be refused pursuant to Article 4(1)(a), third indent, of Regulation No 1049/2001 (protection of public interest with regard to international relations). Furthermore, in accordance with the provisions of Article 4(1)(b) of the said Regulation (protection of the privacy and the integrity of the individual), the General Secretariat is unable to grant access to those parts of the documents which contain data relating to persons whose consent it has not obtained or whose consent it has not been possible to obtain within the time-limit.
8. Regarding the applicant's argument according to which a clear public interest exists in the disclosure of the documents under scrutiny, it must be underlined that the exceptions provided for in Article 4(1)(a) of the Regulation, including the protection of public interest as regards

international relations, are mandatory. Accordingly, after having determined that the conditions were met for the application of the international relations exception pursuant to Article 4(1)(a), third indent of the Regulation, the Council is bound to refuse public access to the requested documents, without the possibility of weighing the need for protection of the requested documents against the public interest in the disclosure of the document, as evoked by the applicant.

9. The Council has also examined, pursuant to Article 4(6) of the Regulation, the possibility of granting partial access to the documents under scrutiny. It has decided that partial access may be given to the following parts of the documents:

- SEC/1351/08:

- Chapter I, Summary:
  - first paragraph,
  - 2 first sentences of the second paragraph, and
  - 4 first sentences of the third paragraph;
  
- Chapter II, Detail:
  - names of those persons in the first paragraph who have given their consent for the disclosure;
  
- Pages 10-11: List of participants:
  - names of those persons who have given their consent for the disclosure.

- SEC/1407/09:

- Chapter I, Summary:
  - first and second paragraph,
  - 5 first sentences of the third paragraph, and
  - fifth and sixth paragraph;
  
- Chapter II, Detail:
  - names of those persons in the first paragraph who have given their consent for the disclosure;
  - second paragraph;

- Page 9: List of participants:
  - names of those persons who have given their consent for the disclosure.

The Council considers that these parts of the documents under scrutiny are not covered by the above-mentioned exceptions.

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