



Council of the
European Union

Brussels, 10 April 2019
(OR. en)

8434/19

INF 106
API 46

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 13/c/01/19

Delegations will find attached the:

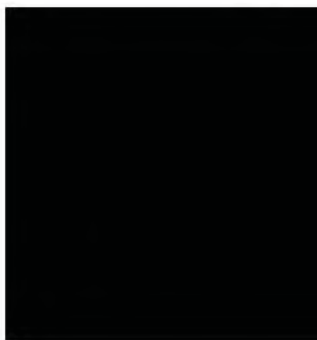
- request for access to documents sent to the General Secretariat of the Council on 31 January 2019 and registered on 18 February 2019 ([Annex 1](#));
- reply from the General Secretariat of the Council dated 27 March 2019 ([Annex 2](#));
- confirmatory application dated 8 April 2019 and registered the same day ([Annex 3](#)).

[Letter sent to the General Secretariat of the Council on 31 January 2019]

17 001208 2019
04.02.2019




Rat der Europäischen Union
Rue de la Loi/Wetstraat 175
B-1048 Bruxelles/Brussel
Belgique/België




**Request for information on the evaluation of options for
of options for a new Data Retention law**

Bielafeld, 31.01.2019

Dear Sir or Madam,

 requests, under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, the release of all memos, annotations, notes, meeting minutes, drafts, submissions, correspondence, expertises, reports and intermediate results, that contain information or statements regarding the questions outlined below.

1. Working Party on Information Exchange and Data Protection (DAPIX)


 access to information about the activities, collaborators, contributors, contact data, work schedules, meeting agendas, work results and working papers, remit or mandate, as well as any further documents relating to the Working Party on Information Exchange and Data Protection (DAPIX).

2. ECJ ruling (C-293/12 and C-203/1)


With respect to: Data retention regimes in EUROPE in light of the CJEU ruling of 21 December 2016 in Joined Case C-203/15 and C-698/15 – Report Nr.: 10098/17 – Council of the European Union:

<https://data.consilium.europa.eu/doc/document/ST-10098-2017-INIT/en/pdf>

"To that end, a detailed questionnaire was sent to the EJCN. Eurojust would like to express its appreciation to the Board of the EJCN, and all its members, for the wholehearted and expeditious manner in which this project was supported" — quoted from page 3 of the PDF Document.

 asks to receive any answers to the questionnaire that were submitted.

3. Europol conferences: 20 March 2018, 14 May 2018, 22/23 November 2018

 requests information about meeting agendas, participants, results, resolutions, financing, work papers, remits or mandates of the conferences organised by Europol on 20 March 2018, 14 May 2018, and 22/23 November 2018, as well as any other documents relating to the aforementioned conferences.




4. EU Document 14319/18


Regarding: Note 14319/18 from 23 November 2018, subject: Data Retention – state of play, No. prev. doc.:13826/18 – Council of the European Union

<http://data.consilium.europa.eu/doc/document/ST-14319-2018-INIT/en/pdf>

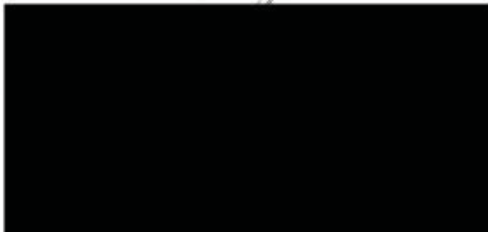
"These findings, among others, were summed up by Europol in two documents and presented to the DAPIX FoP Data retention group" — quoted from page 4 of the PDF document.

 requests to receive the two documents mentioned.

"[...] in the discussion in the DAPIX FoP Data retention meeting on 18 April 2018, the vast majority of Member States expressed reluctance about accepting the idea of RRWs to limit the amount of data retained." — quoted from page 5 of the PDF document.

 requests to receive the positions taken by all Member States.

Kind Regards





Council of the European Union

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

Head of Unit

Brussels, 27 March 2019

DELETED

Email: **DELETED**

Ref. 19/0512-ld/dm

Request made on: 31.01.2019

Registered on: 18.02.2019

Deadline extension: 11.03.2019

Dear **DELETED**

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

As regards your first question on the activities of DAPIX, I would like to advise you to consult the Council Register

<https://www.consilium.europa.eu/register/en/content/int/?lang=en&typ=ADV>

where you can select under Subject "Working Party on Information exchange and Data Protection" and a list of all relevant documents will display. If a document of interest to you is not directly available from the register you can ask access with the relevant form.

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).

Concerning your request to get access to the replies to the questionnaire referred to on page 3 of document 10098/17, please be informed that, having consulted Eurojust², the General Secretariat of the Council cannot grant access to these documents for the reasons set out below.

The disclosure to the public of these replies would negatively affect the principle of mutual trust between Eurojust and the Member States which is required for Eurojust to exercise its mandate. The release of these documents would therefore undermine the protection of public security³.

In addition, as the replies received from the Member States include information that could potentially lead to contesting admissibility of evidence in court, their disclosure could undermine the protection of court proceedings and investigations.

Also for this reason, the General Secretariat of the Council has to refuse access to these documents⁴.

As regards the Europol Conferences of 20 March 2018, 14 May 2018 and 22/23 November 2018, you will find attached partially accessible versions of documents **WK 4507/18** and **WK 5900/18** which are the outcome of the 1st and 2nd Data Retention Matrix Workshops.

The parts to which you do not have access concern photos and screenshots from media sources, of which the disclosure to the public might jeopardise copyrights and consequently could undermine the protection of commercial interests of a natural or legal person, including intellectual property⁵.

² Article 4(4) of Regulation (EC) No 1049/2001.

³ Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

⁴ Article 4(2), second and third indent of Regulation (EC) No 1049/2001

⁵ Article 4(2), first indent of Regulation (EC) No 1049/2001

These are also the documents you requested as referred to on page 4 of document 14319/18.

Finally, you will find enclosed **WK 3974/18** which is the document referred to on page 5 of document 14319/18.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).⁶

Yours sincerely,

Paulo VIDAL

Enclosures:3

⁶ Article 7(2) of Regulation (EC) No 1049/2001.
Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EU) No 2018/1725, if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

[E-mail message sent to access@consilium.europa.eu on 8 April 2019 - 13:35]

From: **DELETED**
Sent: Monday, April 8, 2019 1:35 PM
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Cc: **DELETED**

Dear Sir/Madam,

Thank you for your response of 27 March 2019 to the transparency request we submitted on 31 January 2019 under Regulation (EC) No 1049/2001 (your reference: 19/0512-ld/dm). Unfortunately you largely refused our request. We hereby appeal that refusal.

Re point 1

You referred to the Council of the European Union's document register. **DELETED**'s request, although broad, did in fact relate to specific documents. We would ask you to verify again which of the requested documents are in your institution's possession and to grant us access to them.

- If your institution does not have any of the requested documents, we would ask you to help us identify the institution to which our request should be addressed. Please do not hesitate to contact us informally about this.
- If our request was not sufficiently specific, we would ask that you help us further define it. Please do not hesitate to contact us informally about this.

- Should you refuse our request in this matter, we would ask that you provide us with a detailed explanation of how and why you reached that decision.

Re point 2

You refused to publish the requested documents on the basis that it would pose a risk to the relationship of trust between Eurojust and the Member States, which you claim would create a threat to public security. In addition, you noted that their publication would jeopardise ongoing legal proceedings and investigations.

- We would request that you explain in detail how the publication of these documents would in fact pose a threat to public security.
- We would request that you explain in detail how the publication of these documents would in fact jeopardise ongoing investigations and legal proceedings.
- Furthermore, we would request that you explain in detail how and why the grounds for exception outweigh the public interest in the publication of the documents.

Data retention is an aspect of law enforcement which always involves substantial infringements of fundamental rights. Groundless data collection in particular constitutes a renunciation of traditional investigative techniques. The Court of Justice ruled in its TELE2 judgment that groundless data retention constitutes a disproportionate interference in fundamental rights. [1] The public interest in participating in the democratic process of assessing the judgment and possibly rethinking data retention should therefore be recognised as correspondingly significant. Data retention has previously been widely debated in society on many occasions. A **DELETED** petition against data retention in Germany received around 35 000 signatures. [2]

- We would also request that Germany's reply be published. As a **DELETED**, we are particularly dismayed by the current rules on data retention in Germany. We are therefore bringing an action before the Federal Constitutional Court to contest the legislation currently in force. Our founding directors **DELETED** are among the complainants.

- If full access to the requested documents cannot be granted, we would request that you examine the possibility of partial publication. Should the outcome of this examination be negative, we would ask that you provide a detailed justification of your decision.

Re point 3

Some of the information we requested is missing. In particular, we were not given access to documents on participants or funding, or to working papers. No information at all was provided to us on the workshop held on 22 and 23 November 2018. We would ask you to verify again which documents concerning these matters are in your institution's possession and to grant us access to them.

- If your institution does not have any of the requested documents, we would ask you to help us identify the institution to which our request should be addressed. Please do not hesitate to contact us informally about this.

- If our request was not sufficiently specific, we would ask that you help us further define it. Please do not hesitate to contact us informally about this.

- Should you refuse our request, we would ask that you provide a detailed justification of your decision. In particular, we would ask that you explain how the grounds for exception outweigh the public interest in publication.

You published only parts of working papers WK 4507/2018 and WK 5900/2018. You justified this on the grounds of a potential breach of copyright which could pose a threat to the intellectual property of legal or natural persons.

- We would ask that you reconsider this decision.

In our view, the public interest in having full access to the documents mentioned outweighs the commercial interests of third parties. As already mentioned in our remarks under point 2, using data retention as a law enforcement tool involves substantial infringements of fundamental rights.

In our view, if publicly funded state institutions are discussing such a politically contentious issue, the public has the right to be given full access to the related documents. We therefore ask that you give the public the opportunity to exercise its right of access to documents as laid down in Article 42 of the EU Charter of Fundamental Rights.

- Should you refuse our request, we would ask that you provide a detailed justification of your decision. In particular, we would ask that you explain how the grounds for exception outweigh the public interest in publication.

(Complimentary close)
