



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 5 March 2013

7102/13

**INF 36
API 23**

NOTE

from :	General Secretariat of the Council
to :	Working Party on Information
Subject :	Public access to documents
	- Confirmatory application made by Mr Kees GROENENDIJK (No 05/c/01/13)

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 7 February 2013 and registered on 8 February 2013 ([Annex 1](#))
- reply from the General Secretariat of the Council dated 27 February 2013 ([Annex 2](#))
- confirmatory application dated 4 March 2013 and registered on the same day ([Annex 3](#))

[E-mail message sent on 7 February 2013 - 22:45]

Dear colleagues,
a couple of n/a docs.

First Name: Kees

Family Name: Groenendijk

Street: **DELETED**

Town: **DELETED**

Country: **DELETED**

Email: **DELETED**

Gender: M

Country: Netherlands

Age: **DELETED**

Phone: **DELETED**

date 07/02/2013 22.45

Please send me Council documents no. 10491-12 and no. 13219-12, both on the application of Article 21 of the Schengen Border Code.

I have written an academic article on this issues and continue to study this theme.



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

*Directorate-General F
Communication
Transparency*

*- Access to Documents/
Legislative Transparency*

rue de la Loi, 175
B – 1048 BRUSSELS
Tel: (32 2) 281 67 10
Fax: (32 2) 281 63 61
E-MAIL:
access@consilium.europa.eu

Brussels, 27 February 2013

Mr Kees Groenendijk

e-mail:

DELETED

Ref. 13/0219-mi/jj

Dear Mr Groenendijk,

We registered your request of 8 February 2013 for access to documents 10491/12 and 13219/12. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents¹ (hereafter the "Regulation") and specific provisions of the Council's Rules of Procedure² and has come to the following conclusion:

¹ Official Journal L 145, 31.5.2001, p. 43.

² Annex II to the Council's Rules of Procedure – Council Decision No 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

Document **10491/12** is a note from the Spanish delegation to the Working party on Frontiers/Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein). It contains a report prepared by Spain on the temporary reintroduction of border control at internal borders between 28 April and 4 May 2012 due to the meeting of the Governing Council of the European Central Bank from 2 to 4 May 2012 in Barcelona, in accordance with Articles 23 and 24(1) of Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across the borders (Schengen Borders Code).

Document **13219/12** is a note from the Polish delegation to the Working party on Frontiers/Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein). It contains a report prepared by Poland on the temporary reintroduction of border control at internal borders between 4 June 2012 and 1 July 2012 due to the EURO 2012 European Football Championships, in accordance with Articles 23 and 24(1) of Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across the borders (Schengen Borders Code).

Having consulted the Spanish and the Polish delegations pursuant to Article 4(4) of the Regulation, the General Secretariat has come to the following conclusion:

Pursuant to Article 4(6) of the Regulation, you may have access to the above-mentioned documents, except for those parts which reveal the number of persons refused entry at Spanish and Polish borders during the temporary reintroduction of border control and the reasons for the refusals. This information, if released to the public, could be misused by individuals involved in various criminal organisations to hinder the work of the competent authorities and to circumvent border controls. The disclosure of this information would thus undermine public security. Accordingly, pursuant to Article 4(1)(a) of the Regulation (protection of the public interest with regard to public security), the General Secretariat is unable to grant you access to these parts of the documents.

Statutory remedy notice

Pursuant to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply¹.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosures

¹ Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.

[Confirmatory application - sent by e-mail on 4 March 2013 - 12:24]

Subject: RE: Ref. 13/0219-mi/jj

Dear Jakob Thomsen,

Thank you for your letter of 27 February 2013 with the text of Council documents no. 10491/12 and no.13219/12.

Hereby I make a confirmatory application and request the Council to reconsider its position with regard the non-disclosure of the number of persons refused entry at Spanish and Polish borders during the temporary reintroduction of border control and the reason for the refusals, mentioned in the above documents.

Firstly, it is not understandable how revealing the total number of persons refused entry "could be misused by individuals involved in various criminal organisations to hinder the work of the competent authorities and to circumvent border controls" as stated in your letter. How could knowledge of the total number of persons refused entry during the temporary controls be used to circumvent border control or to plan future crimes?

Secondly, I do not see how a specification of the numbers of refusals per ground for refusal, along the lines of the the five grounds for refusal mentioned in Article 5(1) of the Schengen Borders Code, "could be misused by individuals involved in various criminal organisations to hinder the work of the competent authorities and to circumvent border controls" as stated in your letter. Revealing the numbers does not provide any information on the modus operandi of the persons who were actually refused entry nor any information on their possible involvement in a criminal organisation.

Thirdly, the relevant numbers of refusals and the grounds for refusal have been made public in the reports on earlier cases of temporary reintroduction of border control.

Fourthly, my interest as a Union citizen who wants to be able to control the legality and effectiveness of the way in which Member States apply the Schengen Border Code in practise and as an academic who has written and published repeatedly on the issue of temporary reintroduction of controls at the internal borders of the Union should prevail over a mainly hypothetical risk of misuse of the information. I do not know of any serious indication that "individuals involved in various criminal organisations" have actually "hindered the work of the competent authorities" after my previous publications. Moreover, the mere theoretical possibility of "hindering" the work of authorities is not sufficient to refuse access to information under Article 4(1)(a) of Regulation 1049/2001.

I permit the Council to make my confirmative application fully public in the Council's register of documents.

Yours sincerely,

Kees Groenendijk
