



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 September 2012

13307/12

**INF 131
API 82**

NOTE

from :	General Secretariat of the Council
to :	Working Party on Information
Subject :	Public access to documents
	- Confirmatory application No 17/c/01/12

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 29 June 2012 and registered on the same day ([Annex 1](#))
- reply from the General Secretariat of the Council dated 20 July 2012 ([Annex 2](#))
- confirmatory application dated 30 July 2012 and registered on 31 July 2012 ([Annex 3](#))

[E-mail message sent on 29 June 2012 - 13:07]

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application

This electronic form has been submitted in EN

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of:

Address: **DELETED**

Telephone:

Mobilephone:

Fax:

Requested document(s): 11540/12

General arrangements for the Final Planning Meeting (FPM) for the EU Crisis Management Exercise Multi Layer 2012 (ML 12)
26-06-2012

9075/12

Table of hits recorded by the SIRENE Bureaux Period : 1 January 2011 to 31 December 2011
27-04-2012

8770/12

Detailed evolution of the SIS database according to data mapping and cleansing activities
23-04-2012

10201/12

Proposal for a Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast)
23-05-2012

9821/12

German comments regarding the proposal for a Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast)

10-05-2012

9485/12

Proposal for a Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast)

03-05-2012

11508/12

Outcome of COPE 12 / The Hague, 26-27 April 2012

18-06-2012

DS 1041/2/12 REV 2

Draft Council Conclusions on further enhancing efficient cross-border exchange of law enforcement information

01-06-2012

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

*Directorate-General F
Communication
Transparency*

*- Access to Documents/
Archives*

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access@consilium.europa.eu

Brussels, 20 July 2012

DELETED

e-mail:

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Ref. 12/1134-mi/ns

Dear **DELETED**,

Your request of 29 June 2012 for access to documents 11540/12, 9075/12, 8770/12, 10201/12, 9821/12, 9485/12, 11508/12, DS 1041/12 REV2 and 10333/12 has been registered by the "Access to Documents" unit. 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 documents (Official Journal 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, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

You may have access to documents 9485/12, 10333/12 and 11508/12.

Document 11540/12 is a cover note from the European External Action Service (EEAS) to delegations containing EEAS document EEAS (2012) 01084, a note from the Crisis Management and Planning Directorate (CMPD) to delegations on General arrangements for the Final Planning Meeting (FPM) for the EU Crisis Management Exercise Multi Layer 2012 (ML 12).

Pursuant to Article 4(6) of the Regulation, you may have access to this document, with the exception of the names of participants. These names are personal data and have been compiled for internal administrative purposes. Pursuant to 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, data of this kind may not be published without the consent of the individuals concerned.

Under these circumstances, and in accordance with the provisions of Article 4(1)(b) of Regulation No 1049/2001 (protection of the privacy and the integrity of the individual), the General Secretariat is unable to grant you access to those parts of the document which contain the names of persons whose consent it has not been possible to obtain within the time-limit laid down in Article 7 of the Regulation.

Document 10201/12 is a Presidency note to the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) (Mixed Committee) and sets out a revised version of the draft Council Regulation on migration from the Schengen Information System (SIS I+) to the second generation Schengen Information System (SIS II) (recast).

Uniform rules and processes are needed for the management of SIS II development and migration. This is why, on 3 May 2012, the Commission presented its proposal for a Council Regulation on migration from the Schengen Information System (SIS I+) to the second generation Schengen Information System (SIS II) (recast). The proposal was discussed by the Working Party for Schengen Matters (Acquis) – Mixed Committee (EU-Iceland/Norway/Switzerland/Liechtenstein) on 11 May 2012 and CATS (Mixed Committee) on 24 May 2012. Following these discussions, the original proposal was divided into two identical texts of proposals for a Council Regulation in order to reflect the particular positions of Ireland and the United Kingdom. The Council will now have to reach an agreement on these two texts. Furthermore, the European Parliament has been consulted and is yet to give its opinion on the proposals.

In order to ensure the continuity of the preparations and the timely execution of the migration, the proposal should be adopted at the latest in the second quarter of 2012. Taking into account this important deadline and the fact that for the moment no agreement has been reached on the proposal within the Council, the General Secretariat considers that protection of the institution's decision-making process outweighs possible public interest in identifying the delegations whose positions are set out in the document.

Thus, pursuant to Article 4(6) of the Regulation, you may have access to the content of the requested document, including delegations' positions, but excluding those parts which enable the delegations concerned to be identified. The General Secretariat considers this to be a good compromise between protection of the decision-making process of the Council, on the one hand, and public interest in disclosure, on the other. This allows you to be informed of the arguments raised during discussion concerning an issue on which the Institution has not yet taken a decision.

In the framework of preliminary discussions and negotiations within the Council's preparatory bodies, it is essential that delegations are able to express their views freely so that the Council can find compromise solutions and achieve progress on delicate questions. Therefore, disclosure at this stage of those parts of the document which allow identification of the delegations that have adopted positions on the subject still under discussion, would jeopardise this process, since it could seriously narrow delegations' room for manoeuvre to review their positions in the light of arguments put forward during discussion. The General Secretariat is of the opinion that disclosure of those parts of the document could seriously undermine the Council's decision-making process. Accordingly, pursuant to Article 4(3), first subparagraph of the Regulation (protection of the Council's decision-making process), the General Secretariat is at present unable to grant you access to those parts of the document.

Document DS 1041/2/11 REV 2 is a Presidency note to the Working Group on Information Exchange and Data Protection (DAPIX). Pursuant to Article 4(6) of the Regulation, you may have access to this document, with the exception of the names and email addresses of the chairpersons of activated or proposed actions. These names and email addresses are personal data and have been compiled for internal administrative purposes.

Pursuant to 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, data of this kind may not be published without the consent of the individuals concerned. Under these circumstances, and in accordance with the provisions of Article 4(1)(b) of Regulation No 1049/2001 (protection of the privacy and the integrity of the individual), the General Secretariat is unable to grant you access to those parts of the document which contain the names and email addresses of persons whose consent it has not been possible to obtain within the time-limit laid down in Article 7 of the Regulation.

* * * * *

The necessary consultations concerning documents 9075/12, 8770/12 and 9821/12 are still ongoing. You will be informed of the decision as soon as they have been completed.

According 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 30 July 2012 - 18:38]

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rue de la Loi 175
B-1048 Brussels

25th July 2012

Dear Thomsen,

I write with regard to your letter of 20th July (Ref. 12/1134-mi/ns) in which you refuse access to document 10201/12. I wish to lodge a confirmatory application in response.

Access to certain parts of this document – the names of delegations – is refused on the grounds that there is an “important deadline” of the second quarter of 2012, and “no agreement has been reached on the proposal within the Council”. You argue that:

“Disclosure at this stage of those parts of the document which allow identification of the delegations that have adopted positions on the subject still under discussion, would jeopardise this process, since it could seriously narrow delegations’ room for manoeuvre to review their positions in the light of arguments put forward during discussion.”

The General Court found in the *Access-Info v Council* case that “the first sub-paragraph of Article 4(3) “does not make a distinction according to the state of progress of the discussions. That provision envisages in general the documents relating to a question where a ‘decision has not been taken’ by the institution concerned.” The fact that there is an “important deadline” to be reached is therefore immaterial in refusing access to the names of delegations.

The argument that “identification of the delegations that have adopted positions on the subject still under discussion... could seriously narrow delegations’ room for manoeuvre to review their positions,” is also rebutted by the judgment in the *Access-Info* case. Para. 69 states that the identity of delegations submitting proposals or amendment “must, in a system based on the principle of democratic legitimacy, be publicly accountable for their actions.” The same paragraph goes on to say that:

“If citizens are to be able to exercise their democratic rights, they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant. The identification of the Member State delegations which submit proposals at the stage of the initial discussions does not appear liable to prevent those delegations from being able to take those discussions into consideration so as to present new proposals if their initial proposals no longer reflect their positions. By its nature, a proposal is designed to be discussed, whether it be anonymous or not, not to remain unchanged following that discussion if the identity of its author is known.”

Admittedly this refers to “initial discussions”, but as already noted Article 4(3) of Regulation 1049/2001 does not make any distinction with regard to what stage discussions have reached.

It should be noted that the EU institutions are bound by judgments rendered by the EU courts. While an appeal has been launched in the Access-Info case, appeals have no suspensive effect and no interim measures have been granted by the Court of Justice as regards this appeal.

On the grounds outlined above, therefore, access to those parts of the document originally refused should be granted.

Yours sincerely,

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