



Council of the
European Union

Brussels, 21 April 2016
(OR. en)

8159/16

INF 64
API 45

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 10/c/01/16

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 14 March 2016 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 5 April 2016 ([Annex 2](#));
- confirmatory application dated 18 April 2016 and registered on 19 April 2016 ([Annex 3](#))

[E-mail message sent to access@consilium.europa.eu on 14 March 2016 - 14:09 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of:

Address: **DELETED**

Telephone: **DELETED**

Mobile: **DELETED**

Fax:

Requested document(s): 1.) 5641/15 Proposal for a Regulation (...) on Veterinary medical products, Delegation's comments ADD 1 – ADD 43
2.) 5887/16 Proposal for a Regulation (...) on the manufacture, placing on the market and use of medicated feed and repealing Council Directive 90/167/EEC - Delegations' comments ADD 1 – ADD4.
3.) 6611/16 Draft Council conclusions on the next steps under a One Health approach to combat Antimicrobial Resistance

1st preferred linguistic version: EN - English

2nd preferred linguistic version: DA - Danish



Council of the European Union
General Secretariat

Directorate-General Communication and Document Management
Directorate Document Management
Transparency and Access to Documents Unit

Brussels, 5 April 2016

DELETED
DELETED

Ref. 16/0656-jb/mf

Request made on: 14.03.2016

Dear **DELETED**,

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

I regret to inform you that access to documents **5641/15**, **5641/15 ADD 1 to ADD 43**, **5887/16**, **5887/16 ADD 1 to ADD 4** and **6611/16** cannot be given for the reasons set out below.

Document **6611/16** is a note from the General Secretariat of the Council to the Working Party on Public Health on "*Draft Council conclusions on the next steps under a One Health approach to combat Antimicrobial Resistance*".

This document contains a preliminary text of the Council conclusions still under discussion within the preparatory bodies of the Council. Disclosure of this preliminary text would be premature in that it could impede the proper conduct of these discussions and thereby compromise the conclusion of an agreement on the final text.

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).

Disclosure of the document at this stage would therefore seriously undermine the decision making-process of the Council. As a consequence, the General Secretariat has to refuse access to this document at this stage.²

Having examined the context in which the document was drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in its disclosure.

We have also looked into the possibility of releasing parts of the document. However, as the exception to the right of access applies to its entire content, the General Secretariat is unable to give partial access.

Documents **5887/16 and 5887/16 ADD 1 to ADD 4** are notes from the General Secretariat of the Council to Delegation on "*Proposal for a Regulation of the European Parliament and of the Council on the manufacture, placing on the market and use of medicated feed and repealing Council Directive 90/167/EEC - Delegations' comments*".

Documents **5641/15 and 5641/15 ADD 1 to ADD 43** are notes from the General Secretariat of the Council to Delegation on "*Proposal for a Regulation of the European Parliament and of the Council on veterinary medicinal products - Delegations' comments*".

These documents relate to matters which are still at being discussed within the preparatory bodies of the Council.

The discussion concerns issues on which delegations already have to face strong pressure from various stakeholders. If these documents were to be made public, delegations would refrain from submitting written comments in areas that are in need of clear explanations of positions. Delegations would thus limit themselves to oral explanations, fearing not only added pressure but also that they would weaken the Council's position vis-à-vis the European Parliament.

The General Secretariat has weighed your interest in being informed of progress in these areas against the general interest that progress be made in an area that is still the subject of negotiations. It considers that, at this early stage, disclosure of these documents which contain opinions for internal use as part of deliberations and preliminary consultations within the Council would be premature in that it would impede the proper conduct of the negotiations and compromise the conclusion of an agreement on these subjects.

² Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

Disclosure of the documents at this stage would therefore seriously undermine the decision making-process of the Council. As a consequence, the General Secretariat has to refuse access to these documents at this stage.³

Having examined the context in which the documents were drafted and the current state of play on these matters, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in their disclosure.

We have also looked into the possibility of releasing parts of each document.⁴ However, as the exception to the right of access applies to its entire content, the General Secretariat is unable to give partial access at this stage.

I would also like to inform you that once the legislative acts in question are adopted, these documents and any other legislative document relating to these acts will be made available to the public.⁵

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

Yours sincerely,

Jakob THOMSEN

³ Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

⁴ Article 4(6) of Regulation (EC) No 1049/2001.

⁵ According to Article 11(6) of Annex II to the Council Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35). (*if appropriate add:* and unless its/their content is covered by Article 4(1), (2) or (3), second subparagraph, of Regulation (EC) No 1049/2001).

⁶ Article 7(2) of Regulation (EC) No 1049/2001.

Council documents on confirmatory applications are made available to the public. According to data protection rules at EU level (Regulation (EC) No 45/2001), 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 18 April 2016 - 22:22]

From: **DELETED**

Sent: Monday, April 18, 2016 22:22

To: SECRETARIAT DGF Access Access@consilium.europa.eu

Subject: RE: Ref. 16/0656-jb/mf

Please find attached a letter with a confirmatory application regarding ref 16/0656-jbc/mf

With best regards

DELETED

Council of the European Union
Rue de la Loi/Wetstraat 175
B-1048 Bruxelles/Brussel
Belgique/België

Copenhagen 18 April 2016

Confirmatory application

Dear Jakob Thomsen,

Thank you for your reply to my request for access to documents dated 14 March 2016 with reference no. 16/0636-jb/mf.

I hereby ask the Council to review the decision by the General Secretariat not to give me access to said document neither in full, nor in parts, as stated in your letter by April 5.

As I am aware of the referred article 4(3) first subparagraph of Regulation 1049/2001, I do not question there is legal ground for denying me access, but I question the narrow interpretation of this exemption to transparency by the General Secretariat.

I understand the main line of argument to be found in the following (your letter page 2 paragraph 6):

”The discussion concerns issues on which delegations already have to face strong pressure from various stakeholders. If these documents were to be made public, delegations would refrain from submitting written comments in areas that are in need of clear explanations of positions. Delegations would thus limit themselves to oral explanations, fearing not only added pressure but also that they would weaken the Council's position vis-à-vis the European Parliament.”

The strong pressure from stakeholders can in my mind not serve at an argument not to disclose the content of the documents. On the opposite it rather underlines the need for the public at large to be kept informed thus to ensure the participation of civil society in the legislative process.

The same objection goes for the claim that a disclosure of member states preliminary positions would weaken the Council's position vis-à-vis the European Parliament. That may very well be the case, but I believe it's a price to be paid with respect to article 15.3 in the Treaty of the Functioning of the EU.

In this respect I find it difficult to comprehend that Member State delegations already under strong pressure from stakeholders should be shielded from an equally legitimate pressure from civil society or from the interest by the elected representatives in the European Parliament.

Taking these arguments together I believe the General Secretariat has failed to consider the judgement from 13 October 2013 in case C-280/11 P (Access-Info Europe v Council).

Finally I would like to stress that even if the issue of Antimicrobial Resistance might seem as a minor technical matter primarily relevant to stakeholders, the World Health Organization has described the issue as one of the major challenges for humanity in our time.

I therefor ask the Council to consider the importance of the forthcoming decision and thus the huge public interest to follow, understand and participate in the decision making process *before* the final decisions have been taken, as solemnly stated in the Treaty.

Yours sincerely

DELETED
