



Council of the
European Union

Brussels, 4 April 2017
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NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 11/c/01/17

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 13 March 2017 and registered the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 28 March 2017 ([Annex 2](#));
- confirmatory application dated 31 March 2017 and registered the same day ([Annex 3](#))

[E-mail message sent to access@consilium.europa.eu on 13 March 2017- 13:09 using the electronic form available in the Register application]

Title/Gender:Ms- Ms
Family Name:Mikkola
First Name:Jutta
E-Mail:jutta.mikkola@helsinki.fi
Occupation:
On behalf of:
Address:
Telephone:
Mobile:**DELETED**

Fax:

Requested document(s):

1. document

ST 6926 2017 INIT (06032017): Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents - Period of Validity of Residence Permits issued to Refugees and Beneficiaries of Subsidiary Protection

2. document

ST 5402 2017 REV 1 (21022017) : Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

3. document

ST 5404 2017 INIT (03022017): Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents Questionnaire

4. document

ST 5402 2017 INIT (26012017): Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

5. document

ST 15261 2016 INIT (15122016): Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents



Council of the European Union

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

Head of Unit

Brussels, 28 March 2017

Ms Jutta Mikkola
Email: jutta.mikkola@helsinki.fi

Ref. 17/0597-ld/ns

Request made on: 13.03.2017

Dear Ms Mikkola

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 document **6926/17, 5402/17, 5402/17 REV1, 5404/17 and 15261/16** cannot be given for the reasons set out below.

These documents all relate to the Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive **2003/109/EC** of 25 November 2003 concerning the status of third-country nationals who are long-term residents, which is still at the stage of discussion within the preparatory bodies of the Council.

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).

These documents contains suggestions and positions on a number of provisions of this proposal for further consideration, give details of the on-going discussion and identify issues that need to be addressed before the Council can reach a political agreement. Release to the public of the information contained in these documents would affect the negotiating process and diminish the chances of the Council reaching an agreement. It would also weaken the Council's position vis-à-vis the European Parliament, as negotiations with the latter are yet to begin.

The General Secretariat has weighed your interest in being informed of progress in this area against the general interest that progress be made in an area that is still the subject of negotiations. It considers that, at this stage, disclosure of the documents would be premature in that it would impede the proper conduct of the negotiations and compromise the conclusion of an agreement on this subject.

Disclosure of documents **6926/17, 5402/17, 5402/17 REV1, 5404/17 and 15261/16** would therefore seriously undermine the decision making-process of the Council. As a consequence, the General Secretariat has to refuse access to the documents at this stage.²

Having examined the context in which the documents were 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 their disclosure.

We have also looked into the possibility of releasing parts of the documents³. 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.

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

³ Article 4(6) of Regulation (EC) No 1049/2001.

I would also like to inform you that once the legislative act in question is adopted, and taking into account the provisions of Regulation 1049/2001, these documents and any other legislative document relating to this Regulation will be made available to the public.⁴

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).⁵

Yours sincerely,

Fernando PAULINO PEREIRA

⁴ 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).

⁵ 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 (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 31 March 2017 - 12:04]

From: Mikkola, Jutta A [mailto:jutta.mikkola@helsinki.fi]

Sent: Friday, March 31, 2017 12:04 PM

To: SECRETARIAT DGF Access

Subject: Confirmatory Application

Dear recipient,

Please find attached my confirmatory application under Regulation (EC) No 1049/2001, addressed to

Fernando Paulino Pereira. Please also find attached his letter, to which I refer to in my application.

I look forward to receiving your response in due course.

Yours sincerely,

Jutta Mikkola

Subject: Confirmatory Application to the Council of the European Union

Reference: Total refusal by letter of 28 March 2017 to admit access to documents 6926/17; 5402/17; 5402/17 REV1; 5404/17 and 15261/16 (Ref. 17/0597-ld/ns)

Masala, 31 March 2017

Dear Mr Paulino Pereira,

Thank you for your letter of 28 March 2017 regarding my application for access to Document 6926/17; Document 5402/17; Document 5402/17 REV1; Document 5404/17 and Document 15261/16. I wish to contest the decision in its entirety, as there is an overriding public interest in the publication of each document. Thus, I hereby ask the Council to reconsider its position pursuant to Article 7(2) of Regulation (EC) No 1049/2001.

First, I wonder whether there, indeed, is no part of the above listed five documents, which could be released pursuant to Article 4(6) of Regulation (EC) No 1049/2001. The confirmatory application at hand thereby concerns the total refusal of access to each of these five documents.

Second, all five documents requested concern negotiations for legislative acts. I wish to emphasise, that the importance of facilitating public access to documents related to legislative processes is highlighted in the Treaty of Lisbon. Moreover, the requirement for wider access in these cases is recognised in recital 6 of the preamble to Regulation (EC) No 1049/2001.¹ Furthermore, in case C-280/11 P *Council v Access Info Europe*, the CJEU ruled when interpreting Article 4(3) of Regulation No 1049/2001, that the identities of Member States making proposals in the context of negotiations on future EU legislation must be published. As regards the said five

¹ Recital 6 is worded as follows: "Wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent."

documents requested, the Council is acting in its legislative capacity and thus, the requirements for transparency are even greater.² Indeed, the fact that the Council is acting in its legislative capacity further emphasises the need for transparency of the decision-making in the legislative process at the present stage.

Furthermore, it must be pointed out, that the Court of Justice has held that "the possibility for citizens to find out the considerations underpinning legislative action is a precondition for the effective exercise of their democratic right".³ You have in your letter of 28 March 2017, justifying the total refusal of access to all five documents, stated: "[t]he General Secretariat has weighed your interest in being informed of progress in this area against the general interest that progress be made in an area that is still the subject of negotiations". Nevertheless, refusal of access to the preparatory work concerning the proposal for a qualification regulation and amendments to directive 2003/109/EC, seriously undermines the citizens possibility to ensure that the decision is, in fact, taken in the general interest. The interest of citizens, as myself, to follow and participate in the decision-making in an essential field of society today, would be severely compromised. As for the present overriding public interest, the public interest for transparency and open decision-making in the area of common immigration and asylum policy, concerning further harmonisation through legislative measures, is of particular significance today.

Also, the public interest in the transparency of the decision-making process must be taken into account where the decision-making process is ongoing. Indeed, otherwise the whole meaning of the transparency is rendered meaningless.⁴ I wish to underline, that in case the documents in question would be made accessible only after the decision-making process has ended, the public interest in transparency of the decision-making process of these legislative acts would be rendered void.

² E.g. compared to the judgement in case *Council v In't Veld*, C-350/12 P, EU:C:2014:2039 the requirement for transparency is even stronger, para 76.

³ *Access Info Europe*, C-280/11 P, EU:C:2013:671, para 33 and the case law cited.

⁴ *Council v In't Veld*, EU:C:2014:2039, para 88.

Third, the CJEU has repeatedly held, that the exceptions provided in Regulation (EC) No 1049/2001 must be interpreted and applied strictly.⁵ Importantly, the refusal of access must be reasoned on the basis of "specific and actual" harm that is "reasonably foreseeable".⁶ In accordance with the *Turco* case law it is incumbent on the refusing institution to give a detailed statement of reasons for such refusal.⁷ Therefore, in case of partial or total refusal, the Council must specify, on the part of each document separately, how the disclosure of each document in question could specifically and actually undermine the relevant interest. For all the aforementioned reasons, I ask that the decision as regards each five document is reconsidered.

Finally, I happily agree on my application to be made public and my name published.

Yours sincerely,

Jutta Mikkola

⁵ See e.g. *Access Info Europe*, EU:C:2013:671, para 30; *Council v In't Veld*, EU:C:2014:2039, para 48.

⁶ *Access Info Europe*, EU:C:2013:671, para 72 and the case law cited.

⁷ *Sweden and Turco v Council*, C-39/05 P, EU:C:2008:374, para 69.