



Council of the  
European Union

Brussels, 21 September 2017  
(OR. en)

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**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 22/c/01/17

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Delegations will find attached the:

- requests for access to documents sent to the General Secretariat of the Council on 1 August 2017 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 11 September 2017 ([Annex 2](#));
- confirmatory application dated 20 September 2017 and registered on the same day ([Annex 3](#))

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 1 August 2017 - 09:51 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: **DELETED**

Address: **DELETED**

Telephone: **DELETED**

Mobile: **DELETED**

Fax:

Requested document(s): Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person

ST 14951 2015 INIT

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French

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[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 1 August 2017 - 10:13 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: **DELETED**

Address: **DELETED**

Telephone: **DELETED**

Mobile: **DELETED**

Fax:

Requested document(s): Document 1

ST 5312 2016 INIT - Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person

Document 2

ST 5564 2016 INIT- Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person

Document 3

ST 8044 2017 INIT - Cross-cutting definitions: Qualification Regulation, Asylum Procedures Regulation, Dublin Regulation, Reception Conditions Directive

Document 4

ST 9221 2017 INIT - Theme: 'Limiting abuse and secondary movements' - Dublin Regulation

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French

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**Council of the European Union**

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

*Head of Unit*

Brussels, 11 September 2017

**DELETED**

Email: **DELETED**

Ref. 17/1726-ws/

Request made on: 01.08.2017

Deadline extension: 23.08.2017

Dear **DELETED**,

Thank you for your requests for access to documents of the Council of the European Union.<sup>1</sup>

I regret to inform you that access to documents **5564/16, 5312/16, 14951/15, 8044/17 and 9221/17** cannot be given for the reasons set out below.

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<sup>1</sup> 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).

Whereas documents **5312/16**, **5564/16** and **14951/15** are related to the "Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No **604/2013** of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person", document **8044/17** concerns cross-cutting definitions on the Qualification Regulation, the Asylum Procedure Regulation, the Dublin Regulation and the Reception Conditions Directive and document **9221/17** deals with "Limiting abuse and secondary movements" Dublin Regulation. They all belong to the so called " asylum legislative package" which is still under discussion.

The documents set out results of the discussions on the abovementioned proposal at Council's preparatory bodies and include Member States' positions and drafting suggestions.

The discussions on these suggestions are still on-going and have not yet been concluded.

Release to the public of the information contained in these documents would affect the internal negotiating process and diminish the chances of the Council reaching an agreement. It could as well affect the Council's position when it comes to negotiating with the European Parliament.

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 early stage, disclosure of the documents which contain opinions for internal use as part of deliberations and 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 this subject.

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 the documents at this stage.<sup>2</sup>

We have also looked into the possibility of releasing parts of the documents<sup>3</sup>. However, as the exception to the right of access applies to their entire content, the General Secretariat is unable to give partial access at this stage.

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

<sup>3</sup> Article 4(6) of Regulation (EC) No **1049/2001**.

However I would like to inform that, once the acts are adopted, all relevant documents will be made available to the public.<sup>4</sup>

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

Yours sincerely,

Ramón CHISMOL IBÁÑEZ

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<sup>4</sup> 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 and unless its/their content is covered by Article 4(1), (2) or (3), second subparagraph, of Regulation (EC) No 1049/2001).

<sup>5</sup> 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.

Mr. Ramón Chismol Ibáñez  
General Secretariat of the Council  
Directorate-General Communication and Information  
Knowledge Management  
Transparency  
Head of Unit

Florence, 20 September 2016

Dear Mr. Chismol Ibáñez,

Thank you for your swift and kind response regarding my request for access to the documents of the Council of the European Union (Ref. 17/1726-ws/). The documents requested include 5564/16, 5312/16, 14951/15, 8044/17 and 9221/17. I would like to submit a confirmatory application regarding the denied request.

The requested documents belong to and cover aspects of the “asylum legislative package” which is currently under discussion. The reason given for the denied request is that access would affect the negotiating process and ‘diminish the chances of the Council reaching an agreement.’ And that the disclosure of the documents would ‘therefore seriously undermine the decision making process of the Council.’

Negotiations surrounding the reform of the Common European Asylum System is understandably sensitive, with diverging preferences among member states making agreement a difficult task in the Council. However, I would like to make an appeal against the claim that having access to these documents will significantly diminish or undermine the decision making process.



I am a PhD candidate from the University of Melbourne and the EU Centre on Shared Complex Challenges, Australia. My research focuses on the challenges and opportunities the EU has faced in developing a common and fair Dublin system. Access to these documents will greatly enhance the originality and depth of my research. Importantly, the use of these documents will remain within the scope of my doctoral research. No material will be published in mainstream news media nor will the documents be shared with other persons. The project has been approved by the University of Melbourne Human Research Ethics Committee, and as part of this approval unprocessed material<sup>6</sup> cannot be shared with persons other than those part of the research project. Any scholarly publications resulting from my doctoral research is not foreseen until October 2018. Consequently, the likelihood that access to these documents will seriously undermine the decision making process in the Council is negligible.

Kind regards,

**DELETED**

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<sup>6</sup> Primary documents that have not been incorporated into the thesis or are unpublished