



Council of the  
European Union

Brussels, 8 November 2017  
(OR. en)

14000/17

API 132  
INF 197

**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 26/c/01/17

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 20 September 2017 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 18 October 2017 ([Annex 2](#));
- confirmatory application dated 31 October 2017 and registered on the same day ([Annex 3](#))

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 20 September 2017 - 12:02]

From: Margarida da Silva [ask+request-4663-7add6bc9@asktheeu.org](mailto:ask+request-4663-7add6bc9@asktheeu.org)

To: [Access@consilium.europa.eu](mailto:Access@consilium.europa.eu)

Subject: access to documents request - Regulation of interactions between officials of the General Secretariat of the Council and interest representatives

Dear Council of the EU,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following documents:

- Draft Council decision on the regulation of interactions between officials of the General Secretariat of the Council and interest representatives Code of Conduct - ST 10783 2017 ADD 1 -Draft Council decision on the regulation of interactions between officials of the General Secretariat of the Council and interest representatives - ST 10783 2017 INIT
- Minutes and any other preparaty documents of the meetings of the 2020th meeting of the Working Party on General Affairs held on the 08/09/2017

Yours faithfully,

Margarida da Silva  
CEO, Rue d'edimbourg 26,  
1050 Bruxelles

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via the AsktheEU.org website.

Please kindly use this email address for all replies to this request: [ask+request-4663-7add6bc9@asktheeu.org](mailto:ask+request-4663-7add6bc9@asktheeu.org)

If [Access@consilium.europa.eu](mailto:Access@consilium.europa.eu) is the wrong address for information requests to Council of the EU, please tell the AsktheEU.org team on email [team@asktheEU.org](mailto:team@asktheEU.org)

This message and all replies from Council of the EU will be published on the AsktheEU.org website. For more information see our dedicated page for EU public officials at <https://www.asktheeu.org/en/help/officers>



**Council of the European Union**

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

*Head of Unit*

Brussels, 18 October 2017

Ms Margarida da Silva

Email: ask+request-4663-7add6bc9@asktheeu.org

Ref. 17/1968-rh/ns

Request made on: 20.09.2017

Deadline extension: 11.10.2017

Dear Ms da Silva,

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

Please find attached documents **12882/16 INIT**, **12882/16 ADD1**, **11969/17 INIT** and **CM 3866/17**.

Documents **10783/17 INIT** of 30 June 2017 and **10783/17 ADD1** of 20 July 2017 are notes from the General Secretariat of the Council to the Working Party on General Affairs concerning *Draft Council decision on the regulation of interactions between officials of the General Secretariat of the Council and interest representatives*.

These documents concern issues which are still under discussion within the preparatory bodies of the Council.

The documents give details of progress made and contain drafting suggestions prepared by the Presidency. Release to the public of the information contained in the documents would affect the negotiating process and diminish the chances of the Council reaching an agreement.

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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).

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>

Having examined the context in which the documents were drafted and the current state of play, on balance the General Secretariat of the Council 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 documents.<sup>3</sup> However, as the information contained in each of the documents forms an inseparable whole, the General Secretariat is unable to give partial access at this stage.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>4</sup>

Yours sincerely,

Ramón CHISMOL IBÁÑEZ

(Enclosures)

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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.

<sup>4</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.

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 31 October 2017 - 17:02]

**From:** Margarida da Silva <ask+request-4663-7add6bc9@asktheeu.org>

**Sent:** Tuesday October 31, 2017 3:59 PM

**To:** SECRETARIAT DGF Access

**Subject:** Internal review of access to documents request - Regulation of interactions between officials of the General Secretariat of the Council and interest representatives

Dear Council of the EU,

Please pass this on to the person who reviews confirmatory applications.

I am filing the following confirmatory application with regards to my access to documents request 'Regulation of interactions between officials of the General Secretariat of the Council and interest representatives'.

Thank you for your reply to my request for access to documents Ref. 17/1968-PRO-ns. I would herewith like to submit a confirmatory application in regards to documents 10783/17 INIT of 30 June 2017 and 10783/17 ADD1 of 20 July 2017.

You argue that "The documents give details of progress made and contain drafting suggestions prepared by the Presidency. Release to the public of the information contained in the documents would affect the negotiating process and diminish the chances of the Council reaching an agreement. 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."

This argumentation is at odds with Regulation 1049/2001 for the following reasons:

When using the exception article 4.3 on protecting the decision-making process, the institution must prove that an exception "may be justified only if access to that document could specifically and effectively undermine the protected interest. Moreover, the risk of the protected interest being undermined must not be purely hypothetical and must be reasonably foreseeable." (Case C-280/11 P, Access Info vs. Council).

This was not the case in your reply.

I would also like to reiterate that there is an overwhelming public interest in disclosure of these documents as these relate to the Council's discussions on the reform of the EU Transparency Register and the proposed participation of the Council. There is a widespread interest in the issue of lobby transparency across the EU as it speaks directly to the accountability and scrutiny of policy-makers' interactions with vested interests. These discussions will lead to a Council mandate which will define its position in the negotiations for an Inter-Institutional Agreement which is a fairly non-transparent process itself. Meanwhile, citizens and civil society organisations have for months been seeking to know which positions are being held by their Council representatives and have been denied. There is a pressing and obvious need to be transparent about discussions on lobby transparency.

A full history of my request and all correspondence is available on the Internet at this address:

[https://www.asktheeu.org/en/request/regulation\\_of\\_interactions\\_betwe](https://www.asktheeu.org/en/request/regulation_of_interactions_betwe)

Yours faithfully,

Margarida da Silva  
CEO, Rue d'edimbourg 26,  
1050 Bruxelles

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This message and all replies from Council of the EU will be published on the AsktheEU.org website. For more information see our dedicated page for EU public officials at <https://www.asktheeu.org/en/help/officers>