



Council of the
European Union

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Eingelangt am 29/04/15

Brussels, 29 April 2015
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API 35

NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 07/C/01/15

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 11 February 2015 and registered on the same day ([Annex 1](#));
- replies from the General Secretariat of the Council dated 4 March 2015 ([Annex 2](#));
- confirmatory application dated 8 April 2015 and registered on 9 April 2015 ([Annex 3](#))

[E-mail message sent to access@consilium.europa.eu on 11 February 2015 - 15:44 PM using the electronic form available in the Register application]

From: **DELETED**

Sent: Wednesday 11 February 2015 - 15:44 pm

To: SECRETARIAT DGF Access

Subject: Electronic Request for Access

Title/Gender: Ms **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of: **DELETED**

Address: **DELETED**

Telephone: **DELETED**

Mobile: **DELETED**

Requested document(s):

ST 14704 2014 INIT

ST 14383 2014 INIT

ST 12725 2014 REV 2



Council of the European Union

General Secretariat

Directorate-General Communication and Document Management

Directorate Document Management

Transparency and Access to Documents Unit

Brussels, 4 March 2015

DELETED

Ref. 15/0279-mi/mf

Request made on: 11.02.2015

Dear **DELETED**,

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

Please find attached documents **12725/1/14 REV 2** and **14383/14**.

The General Secretariat is still conducting consultations necessary to the examination of document **14704/14**. We apologise for the delay. You will be notified of the decision as soon as possible.

Yours sincerely,

Jakob THOMSEN

Enclosures

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).



Council of the European Union

General Secretariat

Directorate-General Communication and Document Management

Directorate Document Management

Transparency and Access to Documents Unit

Brussels, 25 March 2015

DELETED

Ref. 15/0279-ADD-mi/mf

Request made on: 11.02.2015

Dear **DELETED**,

Further to your request for public access dated 11 February 2015 and to our letter dated 4 March 2015, the General Secretariat would like to indicate as follows:

The General Secretariat has finalised the consultations concerning document 14714/14². You will find attached a partially accessible version of this document³. However, I regret to inform you that full access cannot be given for the reasons set out below.

Document **14704/14** sets out a Legal Service contribution concerning the possible Council participation to the interinstitutional Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation.

The decision-making process to which the requested document relates is currently ongoing. The Council has not yet taken a position on the issue dealt with by the legal contribution, which is complex and forms a fundamental part of the on-going internal discussions. Disclosure of the legal advice set out in the document would adversely affect the negotiations by impeding internal discussions of the Council on the proposal and would hence risk compromising the capacity of the Council to reach an agreement on the dossier. Moreover, the Council's eventual participation in the interinstitutional Agreement will have to be negotiated with the other institutional actors involved.

² 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).

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

The disclosure of the document would make known to all interlocutors the Council's internal reflections and concerns and would therefore limit its options during possible upcoming interinstitutional negotiations. For those reasons, disclosure of the requested document would undermine the decision-making process pursuant to Article 4 (3) of Regulation (EC) No 1049/2001.

The legal advice set out in this document deals with issues which are contentious and constitute critical elements in the negotiations. The legal advice is therefore sensitive. Disclosure of such a document would therefore undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend the negotiating position of the Council in the possible upcoming interinstitutional negotiations or eventually its possible decision to participate in the interinstitutional agreement. Lastly, if the legal advice was disclosed, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences.

As regards the existence of an overriding public interest in disclosure of the requested document in relation to the interests in protecting the on-going decision-making procedure and in having a frank, objective and comprehensive legal advice under Regulation (EC) No 1049/2001, the General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above-indicated interests so as to justify disclosure of the document.

In view of the foregoing, the General Secretariat of the Council is unable to grant you full access to the requested document. You may however have access to paragraphs 1 - 15 of the document ⁴.

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

Yours sincerely,

Jakob THOMSEN

Enclosure

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

⁵ 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 8 April 2015 - 17:27 PM]

From: **DELETED**

Sent: Wednesday, April 8, 2015 17:27 PM

To: SECRETARIAT DGF Access

From: **DELETED**

Subject: RE: Ref. 15/0279-ADD-mi/mf

Confirmatory application for access to Document 14704/14

Dear Mr. Thomsen,

In your letter of March 25 you informed us that full access to the requested document (14704/14) could not be given. We hereby request that the Council review its decision.

The document in question sets out a legal service contribution that is presumably available to all Council delegations (as you wrote in your letter of March 25: "to all members of the Council"). It is thus not clear from your reasoning how disclosure of this document to the public would impede the ability of the Council to discuss this opinion internally. Furthermore, disclosure of this document would not necessarily limit the Council's options during possible upcoming inter-institutional negotiations, as the Council has not taken a position on this matter.

You reasoned that disclosure of the requested document would undermine the decision-making process pursuant to Article 4(3) of regulation (EC) No 1049/2001. However, the article you quoted refers to an institution's internal decision-making process, and not to the inter-institutional negotiations that might eventually take place. We hereby request that you explain how disclosure of this document would undermine the *internal* decision-making process of the Council.

We consider that there is a public interest in the disclosure of this document which overrides the interests that you indicated and that, on balance, the principle of transparency prevails so that disclosure of this document is justified.

We look forward to your reply.

Yours sincerely,

DELETED