**Council of the
European Union**

**Brussels, 12 June 2018
(OR. en)**

10019/18

**INF 102
API 65**

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents
	- Confirmatory application No 14/c/01/18

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 7 April 2018 and registered on 9 April 2018 (Annex 1);

- reply from the General Secretariat of the Council dated 25 May 2018 (Annex 2)

- confirmatory application dated 11 June 2018 and registered the same day (Annex 3)

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[E-mail message sent to access@consilium.europa.eu **on 7 April 2018 - 16:08 using the electronic form available in the Register application]**

Title/Gender: Mr - Mr
Family Name: **DELETED**
First Name: **DELETED**
E-Mail: **DELETED**
Occupation: Media
On behalf of:
Address: **DELETED**
Telephone:
Mobile: **DELETED**
Fax:

Requested document(s):   - Agendas for all meetings of the Politico-Military Group in January, February and March 2018

- Meeting minutes for all meetings of the Politico-Military Group in January, February and March 2018

- List of attendees/all present for all meetings of the Politico-Military Group in January, February and March 2018

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Council of the European Union
General Secretariat

Directorate-General Communication and Information
Knowledge Management
Transparency
Head of Unit

Brussels, 25 May 2018

Mr **DELETED**
E-mail: **DELETED**

Ref. 18/0708-nh/dm

Request made on: 07.04.2018
Registration on: 09.04.2018
Deadline extension: 30.04.2018

Dear Mr **DELETED**,

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

You requested access to "Agendas for all meetings of the Politico-Military Group in January, February and March 2018
- Meeting minutes for all meetings of the Politico-Military Group in January, February and March 2018
- List of attendees/all present for all meetings of the Politico-Military Group in January, February and March 2018".

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[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).

The General Secretariat of the Council has identified the following documents:

CM 1053 2018 INIT	CM 1130 2018 INIT	CM 1156 2018 INIT	CM 1201 2018 INIT
CM 1317 2018 INIT	CM 1370 2018 INIT	CM 1431 2018 INIT	CM 1552 2018 REV1
CM 1705 2018 INIT	CM 1748 2018 INIT	CM 1775 2018 INIT	CM 1857 2018 INIT
CM 1950 2018 INIT	CM 1792 2018 INIT	CM 1979 2018 INIT	CM 2056 2018 INIT
CM 2139 2018 INIT			

COREU 180115 2018 INIT	COREU 180117 2018 INIT	COREU 180122 2018 INIT
COREU 180129 2018 INIT	COREU 180131 2018 INIT	COREU 180205 2018 INIT
COREU 180213 2018 INIT	COREU 180222 2018 INIT	COREU 180226 2018 INIT
COREU 180227 2018 INIT	COREU 180228 2018 INIT	COREU 180305 2018 INIT
COREU 180312 2018 INIT	COREU 180314 2018 INIT	COREU 180319 2018 INIT
COREU 180319 2018 COR1	COREU 180326 2018 INIT	

The Politico-Military Group doesn't produce any lists of participants.

After having consulted the European External Action Service (EEAS)[2], the General Secretariat of the Council has come to the following conclusion.

You may have access to the following documents:

CM 1053 2018 INIT	CM 1130 2018 INIT	CM 1156 2018 INIT	CM 1201 2018 INIT
CM 1317 2018 INIT	CM 1370 2018 INIT	CM 1431 2018 INIT	CM 1552 2018 REV1
CM 1705 2018 INIT	CM 1748 2018 INIT	CM 1775 2018 INIT	CM 1857 2018 INIT
CM 1950 2018 INIT	CM 1792 2018 INIT	CM 1979 2018 INIT	CM 2056 2018 INIT
CM 2139 2018 INIT			

I regret to inform you that access to other documents identified cannot be given for the reasons set out below.

These documents are Coreus. The reports of Politico-Military Group (PMG) meetings are circulated via the Cortesy system and the documents are so-called "Coreu messages". The Cortesy system is designed for ease of day-to-day communication on CFSP matters between Member States' foreign ministers, the GSC, the Commission and the European External Action Service (EEAS) and the Coreu messages are not entered in the register.

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2   Article 4(5) of Regulation (EC) No 1049/2001

PMG focuses on internal preparations and deliberations for subsequent Political and Security Committee and/or Council decisions. Therefore, the content of these documents is delicate as regards the unanimity-based decision-making process of CSDP-related issues.

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.

Disclosure of these documents would therefore seriously undermine the decision making-process of the Council.

Having examined the context in which these 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.

As a consequence, the General Secretariat has to refuse access to these documents.[3]

We have also looked into the possibility of releasing parts of the documents.[4] However, as the information contained in each of the documents forms an inseparable whole, the General Secretariat is unable to give partial access.

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

Yours sincerely,

Sally BLISS

Enclosures

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3   Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.
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. 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 11 June 2018 - 12:22]**

From: DELETED

Sent: Monday, June 11, 2018 12:22 PM

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

Subject: Re: Ref. 18/0708-nh/dm

Dear Council of the European Union,

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

Best,

DELETED

On 7 April 2018 I filed an access to documents request asking for:

"- Agendas for all meetings of the Politico-Military Group in January, February and March 2018
Meeting minutes for all meetings of the Politico-Military Group in January, February and March 2018
List of attendees/all present for all meetings of the Politico-Military Group in January, February and March 2018"

My request was registered on 9 April 2018. On 30 April I received a deadline extension.

On 30 April 2018, by letter with reference 18/0708-nh/dm, the Council identified 34 documents falling under the scope of my request, granting me access to 17 of them and denying access to the remaining 17, all with reference COREU, under Article 4(3) of Regulation (EC) No 1049/2001.

The Council justifies its refusal by stating that the documents (the so-called "Coreus documents", which in fact constitute agendas and minutes of meetings) are of a preliminary nature and therefore contain "delicate" content "as regards the unanimity-based decision-making process of CSDP-related issues".

The Council also argues that it "could not identify any evidence suggesting an overriding public interest in their disclosure".

To that extent, I would like to state:

First, that the Court of Justice of the European Union has held that the preliminary nature of documents that relate to a decision-making process does not in itself justify the application of the exception laid down in Article 4(3) of Regulation 1049/2001.

The Court has also held that the fact that no agreement has yet been reached on the issues being debated does not therefore establish that the decision-making process is undermined by disclosure.

To this regard, the Council's assertion that release of the requested documents would "affect" the negotiations is a broad claim that does not offer substantial proof as to how how the decision-making process would be negatively impacted by disclosure, and thus be seriously and foreseeably undermined.

It follows that, in absence of such proof, the Council's argument that disclosure would "diminish the chances of the Council reaching an agreement" remains purely hypothetical, and therefore its conclusion that access to the requested documents "would therefore seriously undermine the decision making-process of the Council" remains unfounded.

Second, that the overriding public interest in disclosure lies precisely in the preliminary nature of the documents requested.

It is at this stage of decision making where actors involved in the Council preparatory bodies, namely Member States, not only express but define their positions on relevant issues — this is therefore the moment within the decision-making process where transparency most serves the principles of participation and accountability; both enshrined in the treaties as fundamental pillars of EU democracy.

Third, that the Court of Justice has also held that there is no general presumption of non-disclosure regarding documents as long as they do not belong to a file related to an ongoing administrative or judicial proceeding. The Court has also found that the mere fact that documents relate to a sensitive area of EU work does not make documents sensitive per se.

Consequently, Coreus documents or the so-called "Coreu messages" cannot be excluded in bulk from the Council's transparency obligations, but must instead be subject to individual, case-by-case assessments, both regarding its form (i.e.: the internal system they might pertain to) and its content.

In light of the above, I hereby call on the Council to:

- rectify its initial assessment; and

- disclose the remaining documents that fall under the scope of my request.

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