



Council of the
European Union

033327/EU XXVI. GP
Eingelangt am 31/08/18

Brussels, 31 August 2018
(OR. en)

11741/18

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API 95

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 23/c/01/18

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 13 July 2018 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 27 August 2018 ([Annex 2](#));
- confirmatory application dated 30 August 2018 and registered on the same day ([Annex 3](#)).

[E-mail message sent to access@consilium.europa.eu on 13 July 2018 - 10:29 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:

Address: Please, send documents electronically to the email **DELETED**

Telephone:

Mobile:

Fax:

Requested document(s): Documents .1-5. from this meeting:
<http://data.consilium.europa.eu/doc/document/CM-3652-2018-INIT/en/pdf>
Thank you

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French



Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Head of Unit

Brussels, 27 August 2018

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Ref. 18/1469-nh/jg

Request made on: 13.07.2018
Deadline extension: 03.08.2018

Dear **DELETED**,

Thank you for your request for access to the documents of the Council of the European Union which are listed on the Notice of Meeting and provisional agenda of the meeting of the Working Party on Human Rights (COHOM) of 11 July 2018.¹

Please find attached documents **WK 8220/18** (item 2 of the draft agenda) and **WK 8614/18** (item 3 of the agenda).

Attached you will also find a partially accessible version of document **WK 157/18 REV4** related to item 5 of the draft agenda.² However, I regret to inform you that after having consulted the European External Action Service (EEAS) under Art. 4(4) of Reg. 1049/2001, full access cannot be given for the reasons set out below.

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).

² Article 4(6) of Regulation (EC) No 1049/2001.

Document **WK 157/18** is a Working Paper from EEAS to the Delegations on EU Human Rights Dialogues, Consultations and Sub-committees.

The document contains a list of past and future tentative dates for dialogues. Releasing the tentative dates for future dialogues could provide misleading information to the public and possibly reveal the EEAS' strategy towards these dialogues. It may affect the EU's future position and have a negative impact on the relations between the European Union and third countries.

Full disclosure of document **WK 157/18 REV4** would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse full access to the document.³

After having consulted the EEAS and the Commission under Art. 4(4) of Reg. 1049/2001, I further regret to inform you that access to documents **WK 8031/18** (item 1 on the draft agenda) and **WK 8235/18** (item 4 of the draft agenda) cannot be given for the reasons set out below.

Documents **WK 8031/18** and **WK 8235/18** are Non-papers from EEAS/ Commission services to Delegations on the "draft EU Human Rights Guidelines on Non-discrimination in External Action" and on the "EU-GRULAC resolution on the Rights of the Child - Options for the thematic focus of the 2019 resolution", respectively.

Both issues are still under discussion in the preparatory bodies of the Council.

Release of the documents at this stage would affect the Council's negotiating process as it is likely to put delegations under additional pressure from stakeholders. Disclosure of the document would impede the proper conduct of the negotiations and would therefore seriously undermine the decision-making process of the Council.

The General Secretariat has weighed your interest in being informed of progress in these areas against the general interest that progress be made in these areas that is still the subject of negotiations.

³ Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

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.

As a consequence, the General Secretariat has to refuse access to documents **WK 8031/18** and **WK 8235/18**.⁴

We have also looked into the possibility of releasing parts of the documents.⁵ However, as the exceptions to the right of access apply to their entire content, 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).⁶

Yours sincerely,

Sally BLISS

Enclosures: 3

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

⁵ Article 4(6) of Regulation (EC) No 1049/2001.

⁶ 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 30 August 2018 - 11:08]

From: **DELETED**

Sent: Thursday, August 30, 2018 11:08 AM

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

Subject: appeal against non-disclosure of Council documents

Appeal against the non-disclosure of Council Documents

Based on the announcement Ref. 18/1469-nh/jg from the Council of the European Union, that those documents that I requested based on the transparency rules (WK 8031/18 (item 1 on the draft agenda) and WK 8235/18 (item 4 of the draft agenda)) will not be disclosed, I appeal against this decision.

Based on the founding treaties of the EU, namely art. 15 TFEU, "Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents".

Any provision of the founding treaty cannot be interpreted in a way that it creates obstacle to the very fundamental aim of the provision as such. It means that any elaborated rules of procedure cannot be used in order to jeopardise the basic principle of transparency towards citizens.

In your letter you mention that "Both issues are still under discussion in the preparatory bodies of the Council. Release of the documents at this stage would affect the Council's negotiating process as it is likely to put delegations under additional pressure from stakeholders. Disclosure of the document would impede the proper conduct of the negotiations and would therefore seriously undermine the decision-making process of the Council."

Especially, "draft EU Human Rights Guidelines on Non-discrimination in External Action" is a document that should be fully transparent to all citizens. How come any strategic document that relates to human rights inherent to every human and every citizen can be regarded as "secret"? Any kind of guidelines will serve as a background for interpretation of human rights in the future towards third countries. However, human rights cannot be interpreted differently towards third country citizens compared to EU citizens. EU does not have competence for such an action!! So, any kind of document in the process of preparation touching the issues of human rights, meaning that it also touches MY HUMAN rights, cannot be deliberated in secret and behind closed doors!

Moreover, the standard of human rights is set down by the international and European framework, in the UN system, in the Council of Europe system as well as EU system. Every human right is clearly set out in a form of legal document and its binding interpretation can only be done by the organs mentioned in the respective treaties. Only such interpretation of human rights that is subject to clear and transparent process can impose rights and obligations on natural persons.

How come that the Council of the EU plan to prepare some kind of "guidelines on human rights" that cannot be disclosed to citizens? What does the Council plan to do? Does the Council plan to speak something new that is not so far pronounced on the binding level in the human rights framework?

The Council of the EU does not have the competence to prepare guidelines that go beyond the current legally binding framework of human rights set on the global level. On the other hand, if the Council of the EU only repeats what is already known, then there is no reasonable ground to disclose such document to the public.

The same reasoning applies to the resolution on the Rights of the Child, as it touches basic rights of the child.

Based on the reasoning above, I hereby ask for disclosure of documents WK 803/18 and WK 8235/18 (draft EU Human Rights Guidelines on Non-discrimination in External Action, EU-GRULAC resolution on the Rights of the Child - Options for the thematic focus of the 2019 resolution)

Best regards

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