



Council of the  
European Union

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Eingelangt am 30/10/18

Brussels, 30 October 2018  
(OR. en)

13717/18

INF 199  
API 117

#### NOTE

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From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 28/c/02/18

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 18 September 2018 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 29 October 2018 ([Annex 2](#));
- confirmatory application dated 29 October 2018 and registered on the same day ([Annex 3](#)).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 18 September 2018- 16:36]

From: Mathias Schindler <**DELETED**@asktheeu.org>

Sent: Tuesday, September 18, 2018 4:36 PM

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

Subject: access to documents request - Reports on terrorist threats in Europe

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 information:

\* Document 12300/02 and its revisions

I believe that the documents can be released in full without redaction. Nothing suggests that the 16 year old information contained in these reports could pose any risk that would allow a denial of release.

If this document is considered classified at this point, I believe that such classification is done in error and the classification should be removed in full. Reference is given to Council decision 2013/488/EU article 3 (1), part 2.

Yours faithfully,

Mathias Schindler

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**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, 29 October 2018

Mr Mathias Schindler

Email: **DELETED**@asktheeu.org

Ref. 18/1791-ld/jj

Request made on: 18.09.2018

Deadline extension: 09.10.2018

Dear Mr **DELETED**,

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

Please find attached partially accessible versions of documents **12300/02**, **12300/1/02 REV1** and **12300/2/02 REV2**.<sup>2</sup> However, I regret to inform you that full access cannot be given for the reasons set out below.

Document **12300/02** is a Note of 25 September 2002 from the Presidency to the Working Party on Terrorism, document **12300/1/02 REV1** is a Note of 14 October 2002 from the Working Party on Terrorism to the Article 36 Committee/COREPER/Council and document **12300/2/02 REV2** is a Note of 28 October 2002 from the Article 36 Committee to COREPER and Council.

These documents deal with a Summary of the terrorist threat in Europe.

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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).

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

Document **12300/02 and its revisions**, were classified as "EU CONFIDENTIAL": this classification is applied to information and material the unauthorised disclosure of which could harm the essential interests of the European Union or of one or more of its Member States.<sup>3</sup>

On 11 September 2018, these documents were downgraded in their classification and are now classified "EU RESTRICTED": this means that the unauthorised disclosure of its contents could be disadvantageous to the interests of the European Union or of one or more of its Member States. In spite of this downgrading, some parts of the documents go into issues which are still very sensitive and touch upon Member States' and EU's security issues.

Full disclosure of documents **12300/02** , **12300/1/02 REV1** and **12300/2/02 REV2** would therefore undermine the protection of the public interest as regards public security.<sup>4</sup> As a consequence, the General Secretariat has to refuse full access to these documents.

Moreover, the release of some parts of the document would undermine the public interest as regards international relations with certain third countries.

Full disclosure of these documents would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has also for this reason to refuse full access to these documents.<sup>5</sup>

You may however have access to those parts of documents **12300/02**, **12300/1/02 REV1** and **12300/2/02 REV2** which are not covered by these exceptions.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>6</sup>

Yours sincerely,

Paulo VIDAL

Enclosures: 3

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<sup>3</sup> Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU), OJ L 274, 15.10.2013, p. 1.

<sup>4</sup> Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

<sup>5</sup> Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

<sup>6</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 29 October 2018- 16:49]**

From: Mathias Schindler <**DELETED**@asktheeu.org>

Sent: Monday, October 29, 2018 4:49 PM

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

Subject: Internal review of access to documents Anfrage - Reports on terrorist threats in Europe

Dear Council,

Dear Paulo Vidal,

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 'Reports on terrorist threats in Europe'.

The request for access to documents was made on September 18, 2018 for Document 12300/02 and its revisions, Council received the request the same day. On October 9, 2018, Council wrote an email to me in which they attempted to extend the deadline for handling this request by another 15 working days. As I wrote on October 9, 2018, the letter did not contain the required information and reasoning for an extension of a deadline. At this time, I note that Council routinely fails to comply with the rather comfortable deadline requirements for Regulation 1049/2001 and does not even attempt to justify the routine extension of deadlines with anything substantiated. The extension of the deadline for handling requests for access to documents is permitted in exceptional cases, something that does not apply to this case by any reasonable standard.

On October 29, 2018, I did receive a heavily redacted release of the requested documents.

I believe that the heavy redactions were done without sufficient legal basis and the documents could have been released in full for the following reasons:

\* The requested documents are from September and October of 2002, more than 16 years ago. Any information contained in this document appears to be information available to the general audience already in 2002. It is inconceivable that there is information contained in these documents that deserves any protection, both in absolute terms as well as in relation to the public interest.

\* As it appears, the document does not contain any hints about sources and methods and only plainly states the otherwise not sensitive information that matches the publicly known information of that time, only maybe in a slight condensed form.

\* The redaction process seems to be inconsistent and erring on the side of over-classification. In chapter II, report snippets from various countries seem to be redacted following input from member states on subjective rather than objective criteria. No information contained in these documents indeed could be disadvantageous to the interests of the EU or its Member States, including the security interests. Or could have in 2002 or any time in between these 16 years.

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

[https://www.asktheeu.org/de/request/reports\\_on\\_terrorist\\_threats\\_in](https://www.asktheeu.org/de/request/reports_on_terrorist_threats_in)

Mit freundlichem Gruß,

Mathias Schindler

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