



Council of the  
European Union

Brussels, 7 February 2019  
(OR. en)

6061/19

INF 14  
API 6

**NOTE**

---

From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 02/c/01/19

---

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 20 January 2019 and registered on 21 January 2019 ([Annex 1](#));
- reply from the General Secretariat of the Council dated 29 January 2019 ([Annex 2](#));
- confirmatory application dated 4 February 2019 and registered the same day ([Annex 3](#))

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 20 January 2019 - 22:35 using the electronic form]

From: **DELETED**

Sent: Sunday, January 20, 2019 10:35 PM

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: Electronic Request for Access

Title/Gender: Mr

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: university research

On behalf of:

Address:

Telephone:

Mobile:

Fax:

Requested document(s): ST 14302 2011 INIT

ST 14302 2011 REV 1

ST 14302 2011 REV 2

ST 14302 2011 REV 3



**Council of the European Union**

General Secretariat

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

Brussels, 29 January 2019

Mr **DELETED**  
Email: **DELETED**

Ref. 19/0184-ld/nb

Request made on: 20.01.2019  
Registered on: 21.01.2019

Dear **DELETED**,

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

I regret to inform you that access to document **14302/11** and its **REV1**, **REV2** and **REV3** cannot be given for the reasons set out below.

These documents are Notes from Presidency to COREPER/Council (Mixed Committee) of 16 September 2011, 21 September 2011, 18 November 2011 and 8 December 2011 respectively, on the Draft Council Decision on the framework for the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania.

These notes concern sensitive issues which are still under discussion in the preparatory bodies of the Council and which need to be addressed before an agreement can be reached.

---

<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).

Release to the public of the information contained in the documents would affect the discussions and diminish the chances of the Council reaching an agreement as it may put delegations under additional pressure. The General Secretariat has weighed your interest in being informed of progress in this area against the general interest that progress be made in an area that is still the subject of negotiations. It considers that, at this stage, disclosure of the documents would be premature in that it would impede the proper conduct of the negotiations and compromise the conclusion of an agreement.

Disclosure of documents **14302/11** and its **REV1**, **REV2** and **REV3** 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>

We have also looked into the possibility of releasing parts of the documents.<sup>3</sup> However, as the exception to the right of access applies to their entire content, the General Secretariat is unable to give partial access at this stage

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.

I would also like to inform you that once the legislative act in question is adopted, these documents and any other legislative document relating to this Decision will be made available to the public.

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

Yours sincerely,

Paulo VIDAL

---

<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 (EU) No 2018/1725, 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 4 February 2019 - 15:04]

**From:** **DELETED**

**Sent:** Monday 4 February 2019 3:04 PM

**To:** TRANSPARENCY Access to documents (COMM) <[Access@consilium.europa.eu](mailto:Access@consilium.europa.eu)>

**Subject:** RE: Ref. 19/0184-ld/nb

Hello,

I would urge the Council to reconsider my request for access to document 14302/11 together with documents 14302/11 REV1, REV2 and REV3. In your decision of 29 January 2019 you write that 'the general interest that progress be made in an area that is still the subject of negotiations' outweighs my interest in being informed of progress in this area.

I would point out, however, that in fact the opposite is true. Access to public documents is actually a reflection of the general interest manifested by citizens living in a democracy. This is not so much about my personal access to a specific document as about the access of the general public to documents which concern them. The public interest in being informed about the implications of a draft decision outweighs the Council's interest in keeping the documents secret. In a democracy, it goes without saying that voters and electoral candidates should have full access to public documents, including preparatory documents, provided such documents are not confidential in terms of security or personal data, etc. As far as I am aware, the documents in question are not considered confidential. Previous draft decisions concerning the incorporation of Bulgaria and Romania into the Schengen area have been published (e.g. document 14142/10). Such a draft decision - in particular, one drawn up eight years ago - can hardly be regarded as so sensitive that it cannot be disclosed to the general public.

I would therefore ask the Council to reconsider its decision not to disclose the draft decision.

Yours sincerely,

**DELETED**

---