



Council of the
European Union

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Brussels, 28 June 2019
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NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 18/c/03/19

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 10 May and registered on 13 May 2019 (Annex 1);
- reply from the General Secretariat of the Council dated 4 June 2019 (Annex 2);
- confirmatory application dated 23 June and registered on 24 June 2019 (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 10 May 2019 - 18:13 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of:

Address: **DELETED**

Telephone:

Mobile:

Fax:

Requested document(s) The following document is requested:

WK 10967/2018 INIT

1st preferred linguistic version: EN - English

2nd preferred linguistic version: DE - German



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, 4 June 2019

DELETED

Email: **DELETED**

Ref. 19/1188-mj/ns

Request made on: 10.05.2019

Registered on: 13.05.2019

Dear **DELETED**,

Thank you for your request for access to document **WK 10967/2018**.¹

Document **WK 10967/2018** is a Working document from the General Secretariat of the Council to the **Working Party on Energy** which contains a non-paper from the Commission on the Proposal for a Directive of the European Parliament and of the Council amending Directive **2009/73/EC** concerning common rules for the internal market in natural gas.

After having consulted the Commission on the possible disclosure of this document, the General Secretariat of the Council came to the conclusion that access to document **WK 10967/2018** 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).

This non-paper discusses a number of instruments relevant for negotiations with third countries in the context of the security of gas supply in the Union. Disclosure of this information would impede the proper conduct of the negotiations and would weaken the future position of the European Union in the framework of similar international negotiations.

Disclosure of the document would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to the document.²

We have also looked into the possibility of releasing parts of the document.³ However, as the information contained in the document forms an inseparable whole, the General Secretariat is unable to give partial access at this stage.

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

Yours sincerely,

Paulo VIDAL

² Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

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

⁴ 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.

From: **DELETED**

Sent: Sunday, June 23, 2019 1:15 PM

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

Subject: AW: Ref. 19/1188-mj/ns

**Confirmatory application in accordance with Article 7(2) of Regulation 1049/2001 –
Ref. 19/1188-mj/ns**

To Whom It May Concern:

By letter dated 4 June 2019, the Council refused access to document WK 10967/2018 in its entirety.

The Council describes the document as a Working document from the General Secretariat of the Council to the Working Party on Energy which contains a non-paper from the Commission on the Proposal for a Directive of the European Parliament and of the Council amending Directive 2001/73/EC concerning common rules for the internal market in natural gas.

The Council contends that the document cannot be disclosed because disclosure would undermine the protection of the public interest as regards international relations. In this regard, the following reasoning is given:

"This non-paper discusses a number of instruments relevant for negotiations with third countries in the context of the security of gas supply in the Union. Disclosure of the information would impede the proper context of negotiations and would weaken the future position of the European Union in the framework of similar international negotiations."

This email constitutes a confirmatory application in accordance with Article 7(2) of Regulation 1049/2001. The Council is requested to reconsider its decision, taking into account the points below.

The legislative procedure to which the non-paper relates has been concluded and, as the Council is aware, resulted in the adoption of Directive 2019/692. Directive 2019/692 was published in the EU Official Journal on 3 May 2019 and the Directive entered into force on 23 May 2019. Directive 2019/692 inserts a new Article 49b into the EU Gas Directive (2009/73/EC), allowing for the maintenance of certain international agreements and creating conditions for new, amended, extended or adapted international agreements in the future. To the extent that EU legislative rules now exist on the subject, it is unclear how any comments in a Commission non-paper could rise to the level of undermining the public interest as regards international relations. In this context, the reasoning put forward appears to invoke considerations which are hypothetical and not reasonably foreseeable, and therefore cannot be a basis to refuse disclosure of a document. In any event, the response does not sufficiently explain why the disclosure of the document would risk specifically and actually undermining the protection of the public interest as regards international relations – as required by the consistent case law of the EU Court of Justice.

It is further noted that the reply only refers to risks associated with instruments relevant for international negotiations. To the extent that the non-paper discusses any other issues not pertaining to the new Article 49b, disclosure of those aspects would clearly be appropriate as no specific reasons have been given to justify their non-disclosure. The Council's position that they form an inseparable whole is not sufficient and must, at a minimum, include information on the 'other' content. Otherwise, the Council's position is self-judging and contrary to requirements to provide reasons.

The Council's prompt reply to this confirmatory application is appreciated.

Sincerely,

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