



Council of the  
European Union

069911/EU XXVI. GP  
Eingelangt am 28/06/19

**Brussels, 28 June 2019**  
**(OR. en)**

**10440/19**

**INF 195**  
**API 65**

**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 15/c/01/19

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 15 April 2019 and registered on 16 April 2019 (Annex 1);
- reply from the General Secretariat of the Council dated 6 June 2019 (Annex 2);
- confirmatory application dated 18 June 2019 and registered on the same day (Annex 3).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 15 April 2019 - 17:33]

**From:** DELETED

**Sent:** Monday, April 15, 2019 17:33

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

**Subject:** Access to Documents Request

Dear Madam/Sir,

I am writing to request access to the following documents in accordance with Regulation 1049/2001:

ST 7929 2019 COR 1

ST 7929 2019 INIT

ST 6270 2019 INIT

ST 5875 2019 INIT

ST 5897 2019 INIT

ST 5861 2019 INIT

ST 5581 2019 INIT

ST 5247 2019 INIT

ST 5284 2019 INIT

ST 5285 2019 INIT

ST 15804 2018 REV 1

ST 15458 2018 REV 1

ST 15804 2018 INIT

ST 15458 2018 INIT

ST 14860 2018 REV 1 COR 1

ST 14860 2018 INIT

ST 14863 2018 INIT

ST 14878 2018 INIT

ST 14921 2018 INIT

ST 14550 2018 INIT

ST 14549 2018 INIT

ST 14548 2018 INIT

ST 14091 2018 INIT

ST 14057 2018 INIT

ST 14182 2018 INIT

ST 13839 2018 INIT  
ST 13564 2018 INIT  
ST 13386 2018 INIT  
ST 12184 2018 INIT  
ST 11748 2018 INIT  
ST 10588 2018 INIT  
ST 10588 2018 REV 1  
ST 10588 2018 REV 2

My postal address should you need it is **DELETED**.

Thank you and best wishes,

**DELETED**

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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, 6 June 2019

**DELETED**  
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Ref. 19/1038-rh/jg

Request made on: 15.04.2019  
 Registered on: 16.04.2019  
 Deadline extension: 14.05.2019

Dear **DELETED**,

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

Please find attached following documents you requested:

**7929/19 INIT + COR1**

**6270/19**

**5875/19**

**5897/19**

**5861/19**

**5581/19**

**5247/19**

**15804/18 INIT + REV1**

<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).

15458/18 INIT + REV1

14860/18 INIT + REV1 COR1

14863/18

14878/18

14921/18

14550/18

14549/18

14548/18

14091/18

14057/18

10588/18 INIT + REV1 + REV2

Please also find attached a partially accessible version of document **13386/18**.<sup>2</sup> However, I regret to inform you that full access cannot be given for the reasons set out below.

Document **13386/18** of 19 October 2018 is a note from the Presidency to the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)/ Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland) on *Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council - Presidency discussion paper*.

The documents contains concrete references to the Vulnerability Assessment Biannual Report to the European Parliament, the Council and the European Commission concerning Member States and Schengen Associated Countries. The ultimate goal is to increase the EU internal security by better protection of external borders. Release of the report would jeopardize the public security by revealing sensitive elements of border controls and border checks. Disclosure of document **13386/18** would therefore undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse full access to the document.<sup>3</sup>

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

<sup>3</sup> Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001

I also regret to inform you that access to documents **11748/18**, **12184/18**, **13564/18**, **13839/18**, **14182/18**, **5284/19** and **5285/19** cannot be given for the reasons set out below.

Documents **11748/18** of 31 August 2018, **12184/18** of 14 September 2018, **13564/18** of 25 October 2018, **13839/18** of 5 November 2018, **14182/18** of 12 November 2018, **5284/19** and **5285/19** of 11 January 2019 are notes from the General Secretariat of the Council and the Presidency to Delegations, JHA Counsellors and Working Party on Frontiers concerning agreements between the EU and the Republic of Serbia, Montenegro as well as Bosnia and Herzegovina on actions carried out by the European Border and Coast Guard Agency.

Documents **11748/18**, **12184/18**, **13564/18**, **13839/18** and **14182/18** are classified documents, bearing the classification "RESTREINT UE/EU RESTRICTED". This means that the unauthorised disclosure of their content could be disadvantageous to the interests of the European Union or of one or more of its Member States.<sup>4</sup>

The documents contain very sensitive issues of which the release would reveal to other negotiating partners the EU mandate which would weaken its negotiation position, complicate further developments and even compromise further similar agreements.

The guarantee of confidentiality is key for the success of such complex exercises, which aims to secure both the interests and values of the EU.

Disclosure of the documents 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 documents.<sup>5</sup>

We have also looked into the possibility of releasing parts of the documents.<sup>6</sup> However, as the information contained in the documents forms an inseparable whole, the General Secretariat is also unable to give partial access to them.

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

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

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>7</sup>

Yours sincerely,

Paulo VIDAL

Enclosures

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<sup>7</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.

**DELETED**, 18 June 2019

Mr Paulo Vidal

E-Mail: [access@consilium.europa.eu](mailto:access@consilium.europa.eu)

Ref. 19/1038-rh/jg

Request made on: 15.04.2019

Registered on: 16.04.2019

Deadline extension: 14.05.2015

Confirmatory Application: 18.06.2019

Dear Mr Vidal,

Thank you for your communication dated 6 June 2019, and for the documents attached in your response. I now request that the Council review this decision regarding the partial and total refusal of access to documents detailed below, and submit this confirmatory application on 18 June 2019, according to Article 7(2) of Regulation (EC) No 1049/2001.

Firstly, I was permitted partial access to document 13386/18, with access restricted to page 3 and half of page 2 of the document because of “references to the Vulnerability Assessment Biannual Report to the European Parliament, the Council and the European Commission”. As you explained, “Release of the report would jeopardize public security by revealing sensitive elements of border controls and border checks. However, I request a review of this decision by the Council in light of the fact that the “concrete references” in 1.5 pages of communication are not the same as releasing the full report, and in light of the fact that under Article 15 TFEU, “the Union’s institutions, bodies, offices and agencies shall conduct their work as openly as possible...the European Parliament shall meet in public, as shall the Council when considering voting on a legislative act”. Given the objective of maximum possible openness, I request that the Council reconsider its decision not to allow access in full to this document.



Secondly, I was not granted access to the following documents:

11748/18

12184/18

13564/18

13839/18

14182/18

5284/19

5285/19

The reasons stated for refusal of access to these documents was their treatment of “very sensitive issues of which the release would reveal to other negotiating partners the EU mandate which would weaken its negotiation position, complicate further developments and even compromise further similar agreements”, possibly resulting in the undermining of “protection of the public interest as regards international relations”.

As you point out, these documents concern agreements between the EU and a number of third countries on actions carried out by the European Border and Coast Guard Agency. The negotiations in question have now all been completed, including with other third countries in the region with whom similar agreements have been reached. Furthermore, as far as I am aware, no other negotiations with third countries regarding actions by the European Border and Coast Guard Agency are currently underway. Thus, it is not possible for these documents to weaken the EU’s negotiating position in these negotiations.

Regarding the argument that release of the documents would “complicate further developments and even compromise further similar agreements,” it is not clear to which developments you are referring. Furthermore, if the EU does negotiate future agreements regarding actions by the EBCGA, it is hard to see how the release of these particular documents could compromise them, given that those negotiations will concern different countries with different concerns and priorities. Ultimately, given that the documents relate to procedures that have been completed, they should be released to the public.

At the very least, it is necessary to explain how disclosure of the documents in question would “specifically and actually undermine the interest protected by the exception”. The assertion that their release would “complicate further developments and even compromise further similar agreements” does not demonstrate that “the risk of the interest being undermined” is reasonably foreseeable and not purely hypothetical.<sup>1</sup>

I thus request a review of this decision by the Council in light of Article 15 TFEU and the provisions of Regulation 1049/2001.

I look forward to your response,

Yours Sincerely,

**DELETED**

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<sup>1</sup> Para. 31,

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=143182&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4907071>