



Brussels, 24 July 2019  
(OR. en)

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**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 23/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 13 March 2019 and registered the same day (Annex 1);
- 1st reply from the General Secretariat of the Council dated 3 April 2019 (Annex 2);
- email from applicant dated 3 April 2019 (Annex 3)
- 2nd reply from the General Secretariat of the Council dated 22 May 2019 (Annex 4);
- email from applicant dated 30 May 2019 (Annex 5)
- email from applicant dated 15 July 2019 (Annex 6)
- email from the General Secretariat of the Council dated 22 July 2019 (Annex 7);
- confirmatory application dated 23 July and registered the same day (Annex 8).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 13 March 2019 - 12:53 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: **DELETED**

Address: **DELETED**

Telephone:

Mobile: **DELETED**

Fax:

Requested document(s): Good morning,

I have in my possession a document drawn up by DPG/Codecision Unit and dated 27 November 2013, with the title: "Ordinary Legislative Procedure. Trilogues: A Practical Guide".

I would be interested in:

- 1) knowing if there exists any updated version of this or similar document (spelling out the practical arrangements to be followed by the Council before and during trilogue negotiations);
- 2) if so, in receiving a copy of it/them.

Any further related documents would be appreciated, if possible.

Thanks a lot for your attention.

Best regards,

**DELETED**

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, 3 April 2019

**DELETED**

Email: **DELETED**

Ref. 19/0779-vl/nb

Requests made on: 13.03.2019

Dear **DELETED**,

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

The General Secretariat was unable to identify the document dated 27 November 2013 that you refer to, bearing the title "*Ordinary Legislative Procedure. Trilogues: A Practical Guide*". There are no records in our data bases referring to it. It is possible that the content of that document may have become obsolete and that its content was updated and transposed into publications or brochures focusing on the Council itself as an institution and on its activities.

To deepen our research, it would be useful to receive more information from you in this regard (for instance, a doc. reference number or a scanned copy of its cover page).

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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).

Meanwhile we have identified a more recent publication (2016), "Guide to the Ordinary Legislative Procedure" that focuses also on Trilogues and procedural issues related to them. This publication can be downloaded through the following web link:

<https://www.consilium.europa.eu/media/29872/qc0415816enn.pdf>. We hope it will serve your purposes.

Yours sincerely,

Paulo VIDAL

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[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 3 April 2019 - 17:09]

From: **DELETED**

Sent: Wednesday, April 3, 2019 5:09 PM

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

Subject: RE: Ref. 19/0779-vl/nb

To whom it may concern:

first and foremost, thank you very much for your answer.

Further to your letter, I am sending you the document I referred to in my access to documents request made on 13 March 2019.

In general, and to clarify the terms of my request, I am very much interested in internal guidelines (I am quite familiar with those documents that are available on the Council's website), which provide political players and EU civil servants with information about trilogues and that explain how to act throughout interinstitutional negotiations.

I hope this might better guide your research. In case, I am at your disposal for further clarifications.

Thank you very much again!

Best regards,

**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, 22 May 2019

**DELETED**

Email: **DELETED**

Ref. 19/0779-ADD1-vl/ns

Requests made on: 13.03.2019

Dear **DELETED**,

In addition to our letter of 3 April 2019 and following your email of the same day, we carried out a complementary research in the policy services concerned and in our Archives, as well as through our data bases.

We can confirm that there are neither records of the "2013 internal guidelines/practical guide" nor any updates of such internal document.

The content of that document has become obsolete, with the exception of parts integrated into publications and brochures focused on the Council activities.

In addition to the web link we provided in our letter of 3 April to enable you to download the more recent publication (2016) of this kind, "Guide to the Ordinary Legislative Procedure" (that covers trilogues and related procedural issues, though they are not its predominant topic), you may wish to consult the attached document 12843/15, which addresses the preparation of Trilogues but focuses on a specific context (PNR).

May we draw your attention to the fact that your request was answered on 3 April in line with the provisions of Regulation (EC) No 1049/2001. Therefore, from the procedural point of view, your mail of 21 May and 3 April are not processed as a confirmatory application, but as an extension of your original request of 13 March 2019.

We remain at your disposal for any additional information or further enquiries.

Yours sincerely,

Paulo VIDAL

Enclosure

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[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 30 May 2019 - 16:52]

From: **DELETED**

Sent: Thursday, May 30, 2019 4:52 PM

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

Subject: RE: Ref. 19/0779-ADD1.vl/ns

To whom it may concern:

thanks a lot for your reply and the document attached to your last email.

Unfortunately, that document does not really explain how the Council negotiates legislative files.

Allow me then to ask you the following:

Is the "Guide to the ordinary legislative procedure" available on your website the only document (apart from the Rules of Procedure and their comments) that explains to political actors and civil servants the Council's internal working methods in relation to the ordinary legislative procedure and trilogue negotiations? Are there no more detailed internal documents on these issues (perhaps available on your intranet)?

For instance, after the successful negotiation of what are usually called 'early-second reading agreements', the Council follows a procedure which consists of two steps and includes the adoption of a "political agreement". This is something specific to this kind of trilogue agreements, which is however not explained in the "Guide to the ordinary legislative procedure".



As I am concluding a PhD thesis on the relationship between trilogues and representative democracy in the EU (where I argue that trilogues in fact enjoy democratic legitimacy), having access to more detailed documents would be extremely helpful, especially as regards the descriptive part of my work.

Thanks a lot for your support!

Best regards,

**DELETED**

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 15 July 2019 - 14:41]

**From:** **DELETED**

**Sent:** Monday, July 15, 2019 2:41 PM

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

**Subject:** RE: Ref. 19/0779-ADD1.vl/ns

To whom it may concern:

I am writing to you with regards to the attached email exchange and the access to documents requests contained therein.

Unfortunately, after about 45 days, my request remains unanswered. Therefore, I am hereby re-stating my interest in receiving an answer by sending a confirmatory application in accordance with Art. 7, par. 4 of Reg. 1049/2001 (Access to documents regulation).

In the hopes of hearing from you soon, I am available for possible clarifications about the content of my requests.

Best regards,

**DELETED**

**[E-mail message sent to applicant on 22 July 2019 - 17:15]**

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

**Sent:** Monday, July 22, 2019 5:15 PM

**To:** **DELETED**

**Subject:** RE: Ref. 19/0779-ADD1.vl/ns

Dear **DELETED**,

We acknowledged receipt of your message of July 15th. Since then, we have been carrying out a complementary research with the competent services of the Council Secretariat and have finally identified two internal publications denominated "Ordinary legislative procedure", respectively issued for the staff of the General Secretariat of the Council and the Presidency, which for several aspects could be considered updates of the Guide dated 2013 that you annexed to your mail of 3 April 2019.

These two guides were produced in October 2016. Our Transparency service has not identified any other similar document of this kind.

In the light of its internal consultations with the competent services, the General Secretariat has come to the conclusion that you may have access to those parts of the two documents (please see attachments), focusing in particular on the main subject of your interest as specified in your application (trilogues), which are not covered by any exception of Regulation (EC) No 1049/2001. The remaining content concerns other subjects that you did not pinpoint as areas of your interest and parts protected on the ground of Article 4(3) of the Regulation, since, if divulged, they could reveal internal assessments and methodologies that would enable third parties to know sensitive details of the strategic approach of the institution in complex aspects of negotiations, thus seriously undermining the decision-making process.

We apologise for the delay in finalising the reply to your request, but our deep research, also owing to recent internal re-organisation of the GSC services, took long time.

Given the outcome of our research, we hope that you agree to do not consider your mail of 15th July as a confirmatory application.

Yours Sincerely,

### **Transparency**



#### **Council of the European Union**

##### **General Secretariat**

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit

Rue de la Loi/Wetstraat, 175 - B-1048 Bruxelles/Brussel - Belgique/België

[www.consilium.europa.eu](http://www.consilium.europa.eu) | [access@consilium.europa.eu](mailto:access@consilium.europa.eu)

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[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 22 July 2019 - 20:25]

**From:** **DELETED**

**Sent:** Monday, July 22, 2019 8:25 PM

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

**Subject:** RE: Ref. 19/0779-ADD1.vl/ns

Dear Information Services Unit,

first and foremost thanks a lot for your message.

With the present email, I am kindly asking you to re-consider your decision to grant me partial access to the two documents at stake, especially in light of the most recent CJEU's case-law about transparency in legislative matters (see judgment of 22 March 2018, *De Capitani v Parliament*, T-540/15, EU:T:2018:167).

In this respect, I would like to draw your attention to the following circumstances:

1) according to settled case-law of the CJEU, refusing access on the basis of a general and unspecified risk for the institution's decision-making process ("they could reveal internal assessments and methodologies...") does not meet the requirements set out in Art. 4(3) of the Transparency Regulation as interpreted by the European Courts.

As the CJEU has repeatedly held:

"the application of the exception laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001 requires it to be established that access to the documents requested was likely to undermine specifically and actually the protection of the institution's decision-making process, and that the likelihood of that interest being undermined was reasonably foreseeable and not purely hypothetical" (emphasis added).

[this citation is taken from the above cited judgment in De Capitani v Parliament, paragraph 63].

2) you do not provide any evidence to justify the application of the exception as set out in Art. 4(3) of the Transparency Regulation.

I am fully aware of the difficulties that providing such an evidence entails. However, the GC has also specified that the institutions are requested to show "the existence, on that date, of objective reasons on the basis of which it could reasonably be foreseen that the decision-making process would be undermined if the documents were disclosed".

[this citation is taken from the above cited judgment in De Capitani v Parliament, paragraph 65].

In light of the above considerations, I would kindly ask you to re-assess your decision to grant me only partial access to the two documents at stake.

Thanks a lot again and best wishes,

**DELETED**

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