



Council of the  
European Union

073929/EU XXVI. GP  
Eingelangt am 04/09/19

Brussels, 4 September 2019  
(OR. en)

11877/19

INF 238  
API 108

**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 26/c/02/19

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 18 July and registered on 19 July 2019 (Annex 1);
- reply from the General Secretariat of the Council dated 2 September 2019 (Annex 2);
- confirmatory application dated 4 September 2019 and registered on the same day (Annex 3).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 18 July 2019 - 20:55 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:

Telephone:

Mobile:

Fax:

Requested document(s): 15557/18, 14529/18, 13268/18, 10962/18, 8099/18, 8227/18

1st preferred linguistic version: EN - English

2nd preferred linguistic version: ES - Spanish

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**Council of the European Union**  
General Secretariat  
Directorate-General Communication and Information - COMM  
Directorate Information and Outreach  
*Director*

Brussels, 2 September 2019

**DELETED**

Email: **DELETED**

Ref. 19/1687-ld-em/nb

Request made on: 18.07.2019

Registered on: 19.07.2019

Deadline extension: 09.08.2019

Dear **DELETED**,

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

Please find attached documents **15557/18**, **8099/18** and **8227/18** you requested.

I regret to inform you that access to documents **14529/18** and **13268/18** cannot be given for the reasons set out below.

Document **14529/18** is a Note of 14 December 2018 from the Presidency to the Permanent Representatives Committee (Part 2) containing a Progress Report on the Draft Arrangement between the European Parliament, the Council and the High Representative of the Union for Foreign Affairs and Security Policy concerning access by the European Parliament to classified information held by the Council and the European External Action Service in the area of the common foreign and security policy. This document contains information on ongoing discussions between the parties described in the title on a sensitive issue which is not yet concluded.

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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).

Document **13268/18** is a Note of 19 October 2018 from the Presidency to the Permanent Representatives Committee (Part 2), requesting the approval of a letter setting out the position of the Council on the Proposal for a Regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision **95/167/EC**, Euratom, ESCS of the European Parliament, the Council and the Commission. Negotiations with the European Parliament are still ongoing as are discussions in the preparatory bodies of the Council.

The disclosure of the information contained in these two documents, would seriously undermine the decision making-process of the Council by putting delegations under additional pressure which would make it more difficult to reach an agreement in the Council and with the European Parliament. As a consequence, the General Secretariat has to refuse at this stage access to documents **14529/18** and **13268/18**<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 its entire content, the General Secretariat is unable to give partial access at this stage. Having examined the context in which the documents were drafted, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in their disclosure.

You also requested document **10962/18**. This document dated 9 July 2018 is an opinion of the Council Legal Service on the "Consultation of the European Central Bank on legislative proposals in the area of financial services: material scope of the obligation. Conditions for the participation of the European Central Bank in the meetings of the Council and of its preparatory bodies".

The requested document contains legal advice in its paragraphs 14 to 33. I am pleased to inform you that public access can be granted to the most important part of the opinion, namely its paragraphs 1 to 25 and 32. Access to the remaining parts of the opinion (paragraphs 26 to 31 and 33) cannot be granted for the reasons set out below.

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<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**.

The legal advice covered by this part of the opinion deals with issues which are very broad in scope and relevant to a wide range of current and future dossiers. In particular, the legal advice is sensitive in the context of currently pending files raising similar questions. Disclosure of such a document would therefore undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences. As a consequence, the General secretariat of the Council has to refuse access to the indicated parts of the document.<sup>4</sup>

As regards the existence of an overriding public interest in disclosure in relation to the interest in seeking and receiving legal advice under Regulation (EC) No. 1049/2001, the General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interest so as to justify full disclosure of the document.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>5</sup>

Yours sincerely,

Inga ROSINSKA

Enclosures: 4

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

<sup>5</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.

**From:** **DELETED**

**Sent:** Wednesday, September 4, 2019 00:09 PM

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

**Subject:** Re: Ref. 19/1687-ld-em/nb

I want to file a confirmatory application.

The negotiations on the Draft Arrangement seem to have failed, so it is important to know for what reasons.

The future Regulation on the Parliament's right of inquiry would be of legislative character.

It is not clear what aspects of the Legal opinion related to the ECB's competence are related to which current legislative dossiers. If the public knew when the ECB must be consulted this would avoid litigation over failure to respect an essential procedural requirement.

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