



Council of the
European Union

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NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 31/c/03/19

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 20 September and registered on 23 September 2019 (Annex 1);
- reply from the General Secretariat of the Council dated 1 October 2019 (Annex 2);
- confirmatory application dated 1 October and registered on 2 October 2019 (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 20 September 2019 - 21:10 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): 12259/19

1st preferred linguistic version: EN - English

2nd preferred linguistic version: ES - Spanish



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, 1 October 2019

DELETED

Email: **DELETED**

Ref. 19/2019-mj/jg

Request made on: 20.09.2019

Registered on: 23.09.2019

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.¹

Document **12259/19** dated 16 September 2019 comprises an opinion of the Council Legal Service on the *Draft Regulation of the European Parliament laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom*. It contains a legal analysis of the draft Regulation.

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).

The decision-making process in question is currently ongoing. Moreover, the discussions are sensitive and complex. The issue analysed in the opinion forms an important part of the basis for the discussions. Disclosure of the legal advice would adversely affect the negotiations by impeding internal discussions of the Council on the proposal and would hence the risk compromising the capacity of the Council to reach an agreement on the dossier and thus undermine the decision-making process pursuant to Article 4(3) of Regulation (EC) No 1049/2001.

Moreover, the legal advice covered by this opinion concerns issues that are delicate and critical for negotiations and deals with issues which are very broad in scope. The legal advice is therefore particularly sensitive. 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. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. 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, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. Lastly, 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 regards the existence of an overriding public interest in disclosure 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 disclosure of the document.

In the view of the foregoing, the General Secretariat of the Council is unable to grant you full access to the document 12259/19. However, in accordance with Article 4(6) of Regulation (EC) No 1049/2001, you may have access to its paragraphs 1 to 3.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).²

Yours sincerely,

Fernando FLORINDO

Enclosure

² 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: Tuesday, October 1, 2019 17:45 PM

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

Subject: Re: Ref. 19/2019-mj/jg

I want to file a confirmatory application, specially regarding the possibility of partial access.
