



Brussels, 4 February 2020
(OR. en)

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NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 02/c/01/20

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 19 November 2019 and registered on the same day (Annex 1);
- reply from the General Secretariat of the Council dated 10 January 2020 (Annex 2);
- confirmatory application dated 31 January 2020 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 19 November 2019 - 11:23 using the electronic form available in the Register application]

Title/Gender:

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of:

Address:

Telephone:

Mobile:

Fax:

Requested document(s): Opinion of the selection panel set up pursuant to Article 14(3) of Council Regulation **2017/1939** on the candidates nominated by Cyprus, Greece, Lithuania and Romania

1st preferred linguistic version: EN - English

2nd preferred linguistic version:



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, 10 January 2020

DELETED

Email: **DELETED**

Ref. 19/2403-rh/mf

Request made on: 19.11.2019
Deadline extension: 10.12.2020

Dear **DELETED**,

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

Please note that the requested opinion is set out in document **13105/19** which is a classified document, bearing the classification "RESTREINT UE". This means that the unauthorised disclosure of its contents could be disadvantageous to the interests of the European Union or of one or more of its Member States.²

I regret to inform you that access to document **13105/19** 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).

² 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.

Document **13105/19** contains opinions that were put forward for internal use only. Release of this information would harm decision-making on this and similar issues. Disclosure of the document would therefore seriously undermine the decision-making process of the Council, even after the specific decisions have been adopted. As a consequence, the General Secretariat has to refuse access to this document.³

Having examined the context in which the document was drafted, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in its disclosure.

We have also looked into the possibility of releasing parts of the document.⁴ However, as the exception to the right of access applies to its entire content, the General Secretariat is unable to give partial access.

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

Yours sincerely,

Fernando FLORINDO

³ Article 4(3), second subparagraph, of Regulation (EC) No **1049/2001**.

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

⁵ 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: Friday 31 January 2020 14:07

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

Subject: RE: Ref. 19/2403-rh/mf

Dear Mr. Florindo Fernando,

Thank you for your email.

Following your reply to my access to documents request, Ref 19/2403-rh/mf, from 19.11.2019, regarding the

Opinion of the selection panel set up pursuant to Article 14(3) of Council Regulation 2017/1939 on the candidates nominated by Cyprus, Greece, Lithuania and Romania,

I am hereby applying for a confirmatory application.

Firstly, let me point out that the document is bearing the mark "RESTREINT UE", which is not in itself a valid ground for refusing access to documents, under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

You claim that the disclosure of the document would *harm decision-making on this and similar issues and would therefore seriously undermine the decision-making process of the Council, even after the specific decisions have been adopted.*

However, the document should be disclosed because you have not demonstrated that its disclosure would actually and seriously undermine any decision making process in a non-hypothetical way.

It would be wrong to consider that the disclosure would undermine the decision making-process, when it would actually reinforce and strengthen it, by showing to the public that the rules governing the process in question were observed and applied.

Secondly, the overriding public interest in this decision making process regarding the creation of an EU Public prosecutor office and the appointment of the Chief prosecutor has been highlighted in the media, both in Romania and all over the EU,

<https://www.cotidianul.ro/codruta-kovesi-a-mintit-comisia-europeana-ca-are-gradul-profesional-maxim/>

https://www.stiripesurse.ro/paradoxul-kovesi-in-momentul-preluarii-functiei-de-la-parchetul-european-fosta-sefa-a-dna-pierde-dreptul-de-a-o-ocupa_1387968.html

<https://www.politico.eu/article/parliament-governments-deadlocked-over-eu-prosecutor/>

Therefore, considering all those mentioned above, I am hereby requesting access to the *Opinion of the selection panel set up pursuant to Article 14(3) of Council Regulation 2017/1939 on the candidates nominated by Cyprus, Greece, Lithuania and Romania*, document Ref 19/2403-rh/mf.

Yours sincerely,

DELETED
