



Council of the
European Union

Brussels, 5 October 2022
(OR. en)

13200/22

INF 158
API 87

NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents
- Confirmatory application No 17/c/01/22

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 11 August 2022 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 21 September 2022 (Annex 2);
- the confirmatory application dated 3 October 2022 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 11 August 2022 - 13:59]

From: DELETED

Sent: Thursday, August 11, 2022 1:59 PM

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

Subject: access to documents request - Law on child sexual abuse material

Dear Council of the European Union,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

All working papers and other documents containing positions, comments and text proposals of member states on the law to combat child sexual abuse (2022/015 COD) between May 11, 2022 and August 10, 2022. This shall include, but is not limited to, tables with comments and drafting suggestions by member states.

Yours faithfully,

DELETED

Brussels, 21 September 2022

DELETED

Email: DELETED

Ref. 22/1693-rh/nb

Request made on: 11.08.2022

Deadline extension: 02.09.2022

Dear DELETED,

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

Please attached the following documents that we have identified as related to your request:

ST 9068/22 INIT

ST 9868/22 ADD 1

ST 9068/22 ADD 2

ST 9068/22 ADD 3

ST 9068/22 ADD 4

WK 7201/22

WK 9107/22

However, I regret to inform you that access to documents **WK 10235/22 INIT + REV 1 + ADD 1 + ADD 1 REV 1 + ADD 1 REV 2 + ADD 2 + ADD 2 REV 1** that we have identified as corresponding to your request 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).

Documents **WK 10235/22 INIT + REV 1 + ADD 1 + ADD 1 REV 1 + ADD 1 REV 2 + ADD 2 + ADD 2 REV 1** are meeting documents from the General Secretariat of the Council to the Law Enforcement Working Party (Police) on the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse, and contain compilations of comments from EU Member States on the above-mentioned proposal.

These documents concern a very sensitive issue which is still at the early stage of discussion within the preparatory bodies of the Council. For the Council to reach a common position on these negotiations, its Member States hold consultations and exploratory talks. To reveal the contents of such talks before a common position has been reached would interfere with the negotiations and would jeopardise the conclusion of an agreement within the Council.

The disclosure of the texts at a moment when the appropriate balance of the various interests involved has not yet been achieved within the Council's preparatory bodies would reduce the flexibility for delegations to formulate and reconsider their positions in the light of the arguments exchanged in the debate. This would seriously affect the chances of finding a convergence in delegation's positions.

In addition, should the texts be released, third parties may attempt to influence or exert pressure on the policy choices to be made in the decision making process in question. Disclosure of the requested documents at this stage would thus seriously undermine the decision-making process pursuant to Article 4(3) first indent of 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.

The General Secretariat has weighted your interest in being informed of progress in this area against the general interest that progress be made in an area that is still the subject of negotiations. It considers that, at this stage, disclosure of the documents would be premature in that it would impede the proper conduct of the negotiations and compromise the conclusion of an agreement.

We have also looked into the possibility of releasing parts of these documents.² However, as the exception to the right of access applies to their entire content, the General Secretariat is unable to give partial access.

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

Having examined the context in which the documents were drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in their disclosure.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.

Yours sincerely,

Fernando FLORINDO

Enclosures: 7

[E-mail message sent to access@consilium.europa.eu on 3 October 2022 - 12:33]

From: **DELETED**

Sent: Monday, October 3, 2022 12:31 PM

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

Subject: Internal review of access to documents request - Law on child sexual abuse material

Dear Council of the European Union,

Please pass this on to the person who reviews confirmatory applications.

I am filing the following confirmatory application with regards to my access to documents request 'Law on child sexual abuse material'.

The General Secretariat of the Council has decided that it couldn't release 7 documents about ongoing negotiations between Member States on a regulation laying down rules to prevent and combat child sexual abuse. The General Secretariat argued that making the content public would jeopardize the conclusion on an agreement within the Council.

Given the importance of such a law, it is in the public interest for citizens to be aware of the different Member States' positions. While co-legislators in the European Parliament publicly lay out their positions and amendments, citizens wouldn't be able to understand how a final Council general approach would be concluded.

Moreover, the General Secretariat of the Council argues that third-parties may attempt to influence or exert pressure on the policy choices. Third-parties routinely meet with different Permanent Representations, as well as officials in the home countries, as part of the democratic debate. Some well-connected third-parties to some of the 27 EU governments will also be more likely to be privy to such key documents while the broader public including citizens and NGOs (including those that are not based in Brussels and have limited resources to attempt to influence EU member states). It is thus again in the public interest to make such documents available to a broader public for the sake of a debate on a major societal problem with wide-reaching consequences, child sexual abuse material online.

I therefore believe it is of public interest that the Council of the European Union disclose such documents.

Yours faithfully,

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