



Council of the
European Union

128038/EU XXVII. GP
Eingelangt am 24/01/23

Brussels, 24 January 2023
(OR. en)

5665/23

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API 21

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 02/c/01/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 30 November 2022 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 20 January 2023 (Annex 2);
- the confirmatory application dated 20 January 2023 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 30 November 2022 - 11:03]

From: **DELETED**

Sent: Wednesday, November 30, 2022 11:02 AM

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

Subject: Protocol for a 'Coordinated procedure for entering third-country information on foreign fighters in SIS II' [#264431]

Application pursuant to EU Regulations 1049/2001 and 1367/2006

Dear Sir/Madam,

On the basis of Regulations 1049/2001 and 1367/2006, I would be grateful if you could send me documents containing the following information:

The Franco-German draft of a renewed protocol for a 'Coordinated procedure for entering third-country information on foreign fighters in SIS II', as put forward at the meeting of the EU Council Working Party on Terrorism on 14 and 15 November 2022, together with any relevant presentations or handouts.

I would stress that I would like to receive a reply by email to this address and not via a web portal. Please confirm receipt of this message.

Thank you.

With kind regards,

DELETED

Application no: 264431

Reply to: **DELETED**

Please upload any large files relating to this application to:

<https://fragdenstaat.de/anfrage/264431/upload/751f68a4663c70586e01189b2c3752c6e232a111/>

Postal address

DELETED

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If you have any questions or would like an overview of what would be necessary for an inquiry in your organisation, please visit:

<https://fragdenstaat.de/fuer-behoerden/>

Brussels, 20 January 2023

DELETED

Email: **DELETED**

Ref. 22/2698-rh/vk

Request made on: 30.11.2022

Deadline extension: 21.12.2022

Dear **DELETED**,

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

In response to your request, let us confirm that a proposal was submitted to the Terrorism Working party (TWP) by Germany and France in November 2022 indeed. Presentations given by EUROPOL and German delegation in TWP on 14-15 November 2022 are contained in Council document WK 15927/22. The presentation given by the IntCen was not published.

I regret to inform you that access to the above-mentioned documents cannot be given for the reasons set out below.

The objective of the documents is to serve as a basis for discussion with experts in the area of potential terrorist threat. The documents are still undergoing examination in the Council. For the Council to reach an agreement, its Member States held consultations and exploratory talks. To reveal the content 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 exchange in the debate. This would seriously affect the chances of finding a convergence in delegations' positions.

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).

Disclosure of the documents at this early stage would therefore seriously undermine the decision-making process of the Council. As a consequence, the General Secretariat has to refuse access to the documents.²

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.

We have also looked into the possibility of releasing parts of the documents.³ However, as the information contained in the documents forms an inseparable whole, the General Secretariat is unable to give partial access.

Moreover, the release of the information contained in the documents would jeopardise the public security by revealing specific assessment and sensitive information based upon the available findings and taking into account the ongoing work in this area at EU level and recent developments.

Therefore, the General Secretariat is of the opinion that the disclosure of the documents would undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse access to the documents.⁴

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

² Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

³ Article 4(6) of Regulation (EC) No 1049/2001.

⁴ Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

[E-mail message sent to access@consilium.europa.eu on 20 January 2023 - 15:33]

From: **DELETED**

Sent: Friday, January 20, 2023 3:33 PM

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

Subject: AW: U.Z.: 22/2698-rh/vk [#264431]

Hello,

I do not accept your argument that the presentations concern decision-making processes. At most, the documents may serve to influence such processes. Consequently, nor are the documents themselves 'still undergoing examination', as you claim.

I hereby object to the refusal.

With kind regards;

DELETED

Application no.: 264431

Reply to: **DELETED**

Please upload any large files relating to this application to:

<https://fragdenstaat.de/anfrage/264431/upload/751f68a4663c70586e01189b2c3752c6e232a111/>

Postal address

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