



Council of the
European Union

Brussels, 23 May 2023
(OR. en)

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API 94

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 18/c/02/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 13 March 2023 and registered on the same day (Annex 1);
- the replies from the General Secretariat of the Council dated 3 April 2023 and 27 April 2023 (Annex 2);
- the confirmatory application dated 22 May 2023 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Monday 13 March 2023, 09:28]

From: **DELETED**

Sent: 13 March 2023 09:28

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

Subject: Re: Ref. 23/0446-mj/el

Dear TRANSPARENCY Access to documents (COMM),

Following your message on March 9, 2023 transmitting the list of the list of WK documents distributed between February 1st-15th I hereby request the TEXTS of the WK Listed below.

By the same occasion and, in order to avoid duplicate requests for WK documents related to legislative procedures which have already been released in the public domain I hereby also ask in conformity with art.12.4 of Regulation 1049/01 where these documents could be downloaded.

Thanks in advance

Yours sincerely,

DELETED

SELECTION OF WK DOCUMENTS FROM THE LIST REFERRING TO THE PERIOD FEBRUARY 1ST-15th

1.847/2023-INIT-Proposal for a Regulation of the European Parliament and of the Council on information security in the institutions, bodies, offices and agencies of the Union- Outline of the governance structure as contained in the proposal- 2022/0084 (COD)

2.1236/2023-INIT-Proposal for a Regulation of the European Parliament and of the Council on information security in the institutions, bodies, offices and agencies of the Union- Draft opinion of the Council Security Committee for limiting the scope to EU classified information (EUCI)- 2022/0084 (COD)

3.843/2023-ADD1-Proposal for a Regulation of the European Parliament and of the Council on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020: DE comments on Block 2 -2022/0272 (COD)

4.843/2023-ADD2-Proposal for a Regulation of the European Parliament and of the Council on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020: ES comments on Block 2-2022/0272 (COD)

5.843/2023-INIT-Proposal for a Regulation of the European Parliament and of the Council on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020: delegations' comments on Block 2- 2022/0272 (COD)

6.847/2023-INIT- Proposal for a Regulation of the European Parliament and of the Council on information security in the institutions, bodies, offices and agencies of the Union- Outline of the governance structure as contained in the proposal- 2022/0084 (COD)

7.1236/2023-INIT-Proposal for a Regulation of the European Parliament and of the Council on information security in the institutions, bodies, offices and agencies of the Union- Draft opinion of the Council Security Committee for limiting the scope to EU classified information (EUCI)- 2022/0084 (COD)

8.1190/2023-INIT-REPowerEU Directive - 4column document-2022/0160 (COD)

9.1227/2023-INIT-Proposal for a Directive on Empowering consumers for the green transition -? Comments on Presidency third compromise text 5036/23-2022/0092 (COD)

10.1227/2023-REV1-Proposal for a Directive on Empowering consumers for the green transition -? Comments on Presidency third compromise text 5036/23-2022/0092 (COD)

11.1760/2023-INIT-Empowering consumers for green transition & Ecodesign proposals: complementary instruments against early obsolescence practices- Presentation by the Commission services - 2022/0092 (COD)

12.2057/2023-INIT-Proposal for a Directive on Empowering consumers for the green transition - Comments on Presidency forth compromise text

13.5036/23-REV1-2022/0092 (COD)

14.2057/2023-REV1-Proposal for a Directive on Empowering consumers for the green transition -? Comments on Presidency forth compromise text 5036/23 REV1-2022/0092 (COD)

15.1591/2023-INIT-ACI - 5-column document with SE Presidency Assessment for the informal video conference of the members of the WPTQ on 6 February 2023-2021/0406 (COD)

16.1141/2023-ADD1-Proposal for a Regulation of the European Parliament and of the Council on the European Union Drugs Agency- Outcome of technical meetings-2022/0009 (COD)

17.1141/2023-INIT-Proposal for a Regulation of the European Parliament and of the Council on the European Union Drugs Agency- Outcome of technical meetings-2022/0009 (COD)

18.1706/2023-INIT-Non-paper with a summary of the results of a consultation with Asset Recovery Offices-2022/0167 (COD)

19.1877/2023-INIT-Firearms Regulation on import, export and transit of civilian firearms - PPT presentation-2022/0288 (COD)

20.1935/2023-INIT-Euro 7: Commission's answers to written MS comments-2022/0365 (COD)

21.1912/2023-INIT- Working Party on JHA Information Exchange (IXIM) of 8 February 2023 – Presentations-2022/0424 (COD)

22.1630/2023-INIT-Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU- Presidency compromise proposals and explanatory note-2022/0277 (COD)

23.2185/2023-ADD1Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final- EMFA Regulation – Articles 17 to 19 - Comments from AT, FR, and IT delegations.-2022/0277 (COD)

24.2185/2023-INIT-Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) Interinstitutional File 2022/0277 (COD) - COM (2022) 457 final- EMFA Regulation – Articles 17 to 19 - Comments from CY, DE, FI, LV, NL, and SI delegations.- 2022/0277 (COD)

25.1232/2023-INIT-Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Text with relevance for the EEA and Switzerland)-2016/0397 (COD)

26.1814/2023-ADD1-Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Text with relevance for the EEA and Switzerland)- 2016/0397 (COD)

27.1814/2023-INIT-Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Text with relevance for the EEA and Switzerland)-2016/0397 (COD)

28.1505/2023-INIT-Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] - Compilation of comments of delegations- 2020/0279 (COD)

29.1629/2023-ADD1- Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence - Presentation and exchange of views on a revised draft, submitted by the Presidency, of Chapters 3 and 4- 2022/0066 (COD)

30.1629/2023-COR1- Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence - Presentation and exchange of views on a revised draft, submitted by the Presidency, of Chapters 3 and 4- 2022/0066 (COD)

31.1629/2023-INIT-Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence - Presentation and exchange of views on a revised draft, submitted by the Presidency, of Chapters 3 and 4-2022/0066 (COD)

32.4366/2022-INIT-Proposition de directive du Parlement européen et du Conseil sur la lutte contre la violence à l'égard des femmes et la violence domestique- Tableau de correspondance entre articles et considérants de la proposition de directive-2022/0066 (COD)

33.1825/2023-INIT-Nature Restoration Regulation: WPE on 13 February 2023 – Presidency Steering Note-2022/0195 (COD)

34.1825/2023-REV1-Nature Restoration Regulation: WPE on 13 February 2023 – Revised Presidency Steering Note-2022/0195 (COD)

35.1899/2023-ADD1-Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work-2021/0414 (COD)

36.1899/2023-INIT-Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work-2021/0414 (COD)

37.2213/2023-INIT- Interoperable



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, 03 April 2023

DELETED

Email: **DELETED**

Ref. 23/0736-ws-lk-mj-em-rh-mw-adb/vk

Request made on: 13.03.2023

Dear **DELETED**,

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

Please find attached, as requested, the following documents:

- WK 847/2023
- WK 1190/2023
- WK 1227/2023
- WK 1227/2023 REV 1
- WK 1232/2023
- WK 1591/2023
- WK 1630/2023
- WK 1760/2023
- WK 1825/2023
- WK 1825/2023 REV 1
- WK 1935/2023

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).

- WK 2057/2023
- WK 2057/2023 REV 1
- WK 2185/2023
- WK 2185/2023 ADD 1
- WK 2213/2023
- ST 5036/2023 REV 1

Please note that no document WK 1236/2023 INIT has ever been issued. The competent service had reserved this number for a document they had planned to issue but finally never drafted. This is how the number was mentioned on the list we have sent you; please accept our apologies for the inconvenience.

Please note that the General Secretariat is still conducting consultations necessary to the examination of the remaining documents that you requested. Therefore, we have to extend the deadline for this part of your request by 15 working days, until 27 April 2023.²

Yours sincerely,

Fernando FLORINDO

Enclosures: 17

² Article 7(3) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).



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, 27 April 2023

DELETED

Email: **DELETED**

Ref. 23/0736-ws-lk-mj-em-rh-mw-adb/vk

Request made on: 13.03.2023

Dear **DELETED**,

Further to our reply of 3 April 2023, please find attached, as requested, the following documents:

- WK 843/2023
- WK 843/2023 ADD 1
- WK 843/2023 ADD 2
- WK 1629/2023
- WK 1629/2023 ADD1
- WK 1814/2023
- WK 1814/2023 ADD1
- WK 1899/2023
- WK 1141/23
- WK 1141/23 ADD 1
- WK 4366/2023

Please note that document **WK 1505/23** was requested by your request 23/0669 and that we replied to it.

No documents **WK 1629/2023 COR1**, **WK 1706/2023** and **WK 1877/2023** have ever been issued. The competent services had reserved these numbers for documents they had planned to issue but finally never drafted. This is how the numbers was mentioned on the list we have sent you; please accept our apologies for the inconvenience.

Please find attached a partially accessible version of document **WK 1912/23**.³ However, I regret to inform you that full access cannot be given for the reasons set out below.

Document **WK 1912/23** of 9 February 2023 is a working document from the General Secretariat of the Council to delegations containing presentations made at the Working Party on JHA Information Exchange (IXIM) of 8 February 2023 by the European Commission and the Finnish Border Guard and the Finnish Police.

Whereas the presentation made by DG MOVE of the European Commission can be released in its entirety, the presentation made by Finnish law enforcement authorities contains operational security information on the practical implementation of protection measures at the external borders of the European Union. Knowledge of such internal working methods of EU security authorities is in no case suitable for a release into the public domain as it would aid criminal organisations to disrupt the ongoing EU actions.

Therefore, having consulted with the originating sources of the documents, the General Secretariat of the Council is of the opinion that full disclosure would undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse full access to this document.⁴ You may, however, have a large partial access to it.

Please find also attached a partially accessible version of document **WK 1899 2023 ADD1**.⁵ I regret to inform you that full access to this document cannot be given for the reasons set out below.

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

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

⁵ Article 4(6) of Regulation (EC) No 1049/2001.

Document WK 1899 2023 ADD1 contains contributions received from several delegations, with a view to the meeting of 13th February of the Social Questions Working Party, regarding the proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work. A paragraph contained therein includes legal advice which concerns an issue that is part of a core political discussion in the file in question. The legal issue referred to in this passage is of a sensitive nature in the context of the examination of this proposal, in particular in relation to the necessity for delegations to find a compromise on this text. Consequently, this passage falls within the scope of Article 4(2), second indent, of Regulation 1049/2001 (protection of legal advice).

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: 13

[E-mail message sent to access@consilium.europa.eu on Monday, 22 May 2023, 11:38]

From: **DELETED**

Sent: 22 May 2023 11:38

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

Subject: Internal review of access to documents request - Access to WK documents linked to EU legislative procedures from February 1st to February 15th,2023

Dear Council of the European Union,
(to the attention of Dr Fernando FLORINDO - DG COMM)

First of all, I thank you for your message and for the texts of the WK documents you sent me on April 27th and in previous messages.

I took note also of the security reasons preventing the Council from giving full access to document WK 1912/23 (presentations made at the Working Party on JHA Information Exchange -IXIM- of 8 February 2023)

However, I hereby submit a CONFIRMATORY APPLICATION for having full access to Document WK 1899 2023 ADD1 which contains the contributions received from several delegations, with a view to the meeting of 13th February of the Social Questions Working Party, regarding the proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work.

According to your letter the exception dealing with the protection of Legal advice (art 4(2) second indent of Regulation 1049/2001 is applicable because "a paragraph contained therein includes legal advice which concerns an issue that is part of a core political discussion in the file in question. The legal issue referred to in this passage is of a sensitive nature in the context of the examination of this proposal, in particular in relation to the necessity for delegations to find a compromise on this text. " On this point, may I recall that according to the CJEU Jurisprudence there is no general need for confidentiality as regards the opinions of the Council Legal Service relating to a legislative process because Regulation No 1049/2001 imposes, in principle, an obligation to disclose them (see, to that effect, judgment of 1 July 2008, Sweden and Turco v Council, C 39/05 P and C 52/05 P, paragraphs 67 and 68.

Such a general rule, in my opinion, is even more binding after the entry into force of the Lisbon Treaty which define at primary law level the notion of legislative procedure and impose to the co-legislator an higher standard of legislative transparency (art 16.8 TEU and 15.2 TFUE). Therefore, exceptions to transparency of legislative debates should be interpreted more strictly than it was the case in the pre-Lisbon phase when "legislation" had a substantial different scope.

In your statement you make reference to the "SENSITIVE" nature of the legal service opinion because it may be necessary in view of finding a compromise on the legislative text. However even before the entry into force of the Lisbon Treaty the Court considered that it was incumbent on the institution concerned to give a DETAILED STATEMENT OF REASONS for refusing the access to a specific legal opinion when it was of a PARTICULARLY SENSITIVE NATURE (judgment of 1 July 2008, Sweden and Turco v Council, C 39/05 P and C 52/05 P, EU:C:2008:374, paragraph 69). Even If i am not convinced that this exception could still be raised (bearing in mind the post Lisbon Constitutional dimension of legislative transparency), I am not convinced that this exception may be raised also according to the pre-Lisbon standards as still described in art 4(2) second indent of Regulation 1049/01. In my opinion a legal opinion whose aim is to help the legislator in finding a compromise is not of PARTICULARLY SENSITIVE nature or more sensitive, to make an exemple, than the legal opinion which was dealt with by the CJEU on 16 February 2022 in Cases C 156/21, and C 157/21, (paragraphs 55-58).

I hereby ask you to give public access to a full version of the document WK 1899 2023 ADD 1.

Thanks in advance for your understanding

Yours faithfully,

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