



Council of the
European Union

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Eingelangt am 08/05/24

Brussels, 8 May 2024
(OR. en)

9812/24

INF 141
API 80

NOTE

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| From: | General Secretariat of the Council |
| To: | Delegations |
| Subject: | Public access to documents - Confirmatory application No 18/c/01/24 |

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 1 March 2024 and registered on 4 March 2024 (Annex 1);
- the reply from the General Secretariat of the Council dated 18 April 2024 (Annex 2);
- the confirmatory application dated 7 May 2024 and registered on 8 May 2024 (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Friday 1 March 2024, 23:43 using the electronic form available in the Register application.]

Form of address

DELETED

Family name

DELETED

First name

DELETED

E-mail

DELETED

Occupation

Academia

I submit this request on my own behalf

Name of the organisation

Full postal address

DELETED

Telephone

Requested document(s)

6277/24 of 26 February 2024 concerning institutional file 2022/0134(COD)



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, 18 April 2024

DELETED

Email: **DELETED**

Ref. 24/0772

Request made on: 01.03.2024

Registered on: 04.03.2024

Deadline extension: 25.03.2024

Dear **DELETED**,

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

Please find attached a partially accessible version of document **ST 6277/24**. However, I regret to inform you that access to this document cannot be given for the reasons set out below.

Document **6277/24** of 26 February 2024 is a note from the Presidency to Coreper on the *Proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast) - Preparation for the trilogue*. It concerns a sensitive issue which is still under discussion within the Council.

For the Council to reach a final position, its Member States held consultations and exploratory talks. To reveal the content of such talks would interfere with the negotiations and would jeopardise the conclusion of an agreement within the Council.

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 disclosure of the text 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.

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

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.

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

Enclosure

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

[E-mail message sent to access@consilium.europa.eu on Tuesday, 7 May 2024, 18:57.]

From: **DELETED**

Subject: Re: Ref. 24/0772

Dear Fernando FLORINDO,

Thank you for your letter of 18 april 2024 (your Ref 24/0772) concerning Council documents no. 6277/24 of 26 February 2024.

Hereby, I make a confirmatory application and request the Council to reconsider its position with regard to the non-disclosure of almost the whole text of that document.

Firstly, the argument that revealing the content of discussions in the Council would interfere with the negotiations and would jeopardise the conclusion of an agreement within the Council, can not be a reason to refuse disclosure of the whole document except for a few general introductory alineas. It could possibly be a ground not to disclose the names of Member States indicating their position in the debate.

Secondly, it is unclear why disclosure of the text, as stated by the Council, would necessarily “reduce the flexibility for delegation to formulate and reconsider their positions in the light of the debate” in the Council. The disclosure may well result in the introduction of new arguments and alternative solutions contributing to convergence of delegations positions.

Thirdly, it is unclear why disclosure of the document at this stage “would seriously undermine the decision-making process of the Council”. All earlier Council documents on the Commission’s proposal have been made public in the Council’s register, including documents stating the position of Member States on the proposal or the position or proposals of the Presidency. Apparently, disclosure did not harm or undermine the decision making process of the Council so far. Why would this be otherwise for the requested document?

Fourthly and most importantly, the statement that the General Secretariat “could not identify any evidence suggesting an overriding public interest in its disclosure” fully disregards the case law of the Court on the democratic rights of citizens to participate in the legislative process, as expressed among others in the judgement of the Court of 25 January 2023 in case T-163/21, point 84: “Although, by the ground relied on in paragraph 23 of the contested decision, the Council alluded to a risk of public pressure, as it submits in the defence, it should be recalled that, in a system based on the principle of democratic legitimacy, co-legislators must be answerable for their actions to the public. If citizens are to be able to exercise their democratic rights they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information (judgment of 22 March 2011, *Access Info Europe v Council*, T-233/09, EU:T:2011:105, paragraph 69). Furthermore, Article 10(3) TEU states that every citizen is to have the right to participate in the democratic life of the Union and that decisions are to be taken as openly and as closely as possible to the citizen. Thus, the expression of public opinion with regard to a particular legislative proposal forms an integral part of the exercise of Union citizens’ democratic rights (judgment of 22 March 2018, *De Capitani v Parliament*, T-540/15, EU:T:2018:167, paragraph 98).”

I permit the Council to make my confirmative application fully public in the Council's register of documents.

Yours sincerely,

DELETED