



Council of the  
European Union

Brussels, 24 April 2020  
(OR. en)

7524/20

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**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 14/c/01/20

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 29 March 2020 and registered on 30 March 2020 (Annex 1);
- reply from the General Secretariat of the Council dated 22 April 2020 (Annex 2);
- confirmatory application dated 23 April 2020 and registered on the same day (Annex 3).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) 29 March 2020 - 16:06 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of:

Address: **DELETED**

Telephone:

Mobile:

Fax:

Requested document(s): doc. 7124/05, JUR 90 MAR 33, dated 8 March 2005

1st preferred linguistic version: EN - English

2nd preferred linguistic version:

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**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, 22 April 2020

**DELETED**

Email: **DELETED**

Ref. 20/0688-mj/jl

Request made on: 29.03.2020  
Registered on: 30.03.2020

Dear **DELETED**

Thank you for your request for access to documents of the Council of the European Union.<sup>1</sup>

Document **7124/05**, dated 8 March 2005, comprises a contribution of the Council Legal Service related to the presentation of the Community's positions in the International Maritime Organisation.

The legal advice covered by this opinion concerns issues that are delicate and deals with issues which are very broad in scope despite the fact of being rendered already fifteen years ago. The legal advice remains therefore particularly sensitive. Disclosure of such a document would therefore undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No **1049/2001**. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service.

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<sup>1</sup> 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).

Furthermore, since the issues examined are of a horizontal nature, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. In fact, these issues are currently subject of legal proceedings before the Court of Justice in case C-161/20, Commission v. Council, and their disclosure would undermine the Council's ability to effectively defend itself in those proceedings. Consequently, disclosure of such document would undermine in a reasonably foreseeable and not merely hypothetical way the interest of the Council in protecting legal advice pursuant to Article 4(2), second indent, of Regulation (EC) No 1049/2001.

As regards the existence of an overriding public interest in disclosure under Regulation (EC) No 1049/2001, the General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interest so as to justify disclosure of the document.

In the view of the foregoing, the General Secretariat of the Council is unable to grant you full access to the document 7124/05. However, in accordance with Article 4(6) of Regulation (EC) No 1049/2001, you may have access to its paragraphs 1 to 2.

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

Yours sincerely,

Fernando FLORINDO

Enclosure: 1

**From:** **DELETED**

**Sent:** Thursday, April 23, 2020 13:12

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

**Subject:** Re: Ref. 20/0688-mj/jl

Dear Sir/Madam,

I hope this finds you well in these hard times. Please find attached my confirmatory application under Article 7(2) of Regulation 1049/2001.

Best regards:

**DELETED**

**DELETED**

Sofia, 23 April 2020

Mr Fernando Florindo

Ref. 20/0688-mj/jl

Request made on: 29.03.2020

Registered on: 30.03.2020

Dear Mr Florindo,

Thank you very much for your letter of 22 April 2020 with the results of my access to documents request of 29.03.2020. I appreciate the work of the Secretariat in managing to find Document 7124/05, dated 8 March 2005. I also hope that you and your office are staying safe and healthy during these crisis times.

I would like to take this opportunity to avail myself of the right under Article 7(2) of Regulation 1049/2001 to which you also referred in your letter. In particular, my request to have the decision reconsidered is on the basis of the following considerations.

First, while I would not want to be in any way prejudicing the Council's workings, I would like to ask for a reconsideration of the part of the decision which refuses releasing even part of the substance of the document (beyond the first two paragraphs). In particular, I do not see how it would prejudice the Council for at least certain meta information to be publicly available. In particular, you mentioned that "the issues examined are of a horizontal nature" and I would like to at least know specifically what these issues were on which the Legal Service provided its opinion and not just the general issue relating to the IMO circulation refusal. I want to know this not only in order to satisfy my access request but also to be able to direct my inquiry through this confirmatory application. That is, with the current available information, I am unable to fully substantiate my confirmatory application.

Second, I am afraid that I cannot fully agree with the reasons you provided for refusing access. In your letter you consider that disclosing with the public the document “may lead the Council to display caution when requesting similar written opinions from its Legal Service”. This view contradicts the whole idea of transparency within the EU administration. Much more recent opinions of the Legal Service of the Council as well as Commission and the European Parliament have been shared on equally if not more sensitive matters such as the EU-Morocco agreement on the question of Western Sahara. It is incompatible with the ideas of transparency and good administration that the Council may display caution in requesting such opinions just because the public may eventually access these opinions. These opinions are by definition a matter of public concern because the Council exercises public power and is bound to observe the rule of law, as the Legal Service opinions undoubtedly profess. The Council may only display such caution if it is unwilling to observe the rule of law, which I doubt is what you meant in your letter.

This position is not affected by your consideration that “disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts”. This is because you seem to suggest that the Legal Service would contradict itself in its submissions to the Court. Although the Legal Service may want to protect certain parts of its opinion as part of its litigation strategy, such protection must be directed and cannot serve as a catch-all reason for any and all opinions or, as in the present case, for an opinion that, as you said, deals with a big number of issues. Indeed, you referred to case C-161/20, Commission v. Council, of which I was unaware when I sent my request and I could not have been as it was brought on 14 April 2020, according to the website of the Court. Unfortunately, there is no information as to the topic of the case on that website and I am unable to fully substantiate my confirmatory application. Even if that Case relates to parts of the document in question and there may be objective reasons to withhold dissemination during the proceedings, this cannot be extended to the whole opinion and should be limited for the duration of the proceedings only.

In light of these considerations I would like to formally ask the Council to review its decision. Due to the lack of relevant information to which I referred above, I was unable to fully substantiate my confirmatory application and I reserve the right to supplement if further once I receive your reaction on this initial part of my confirmatory application. Thank you in advance for the consideration and I am looking forward to your answer and wish you to stay safe.

Best regards

**DELETED**

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