



Council of the
European Union

Brussels, 7 September 2020
(OR. en)

10432/20

INF 155
API 105

NOTE

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

Delegations will find attached the:

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

[E-mail message sent to access@consilium.europa.eu on 29 July 2020 - 13:31 using the electronic form available in the Register application]

From: **DELETED**

Sent: Wednesday, July 29, 2020 1:31 PM

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

Subject: Electronic Request for Access

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of: **DELETED**

Address: **DELETED**

Telephone: **DELETED**

Requested document(s): ST 6934 2020 INIT (Exceptional measures on the continuation of decision making in the Council)



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, 1 September 2020

DELETED

Email: **DELETED**

Ref. 20/1400-ld/nb

Request made on: 29.07.2020

Deadline extension: 19.08.2020

DELETED,

Thank you for your request for access to documents of the Council of the European Union¹.

Document **6934/20** is a note sent by the General Secretariat of the Council to delegations on 19 March 2020 concerning exceptional measures on the continuation of decision-making in the Council.

The document examines and contains proposals to ensure the continuity of Council decision-making in the current exceptional circumstances caused by the COVID-19 pandemic.

Examination of these documents resulted in Council Decision (EU) **2020/430** of 23 March 2020 on a temporary derogation from the Council's Rules of Procedure in view of the travel difficulties caused by the COVID-19 pandemic in the Union². The derogation has been extended twice.

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 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

² OJ L 88I, 24.3.2020, p. 1.

However, the release of preparatory document **6934/20** could generate misinterpretations and misperceptions that could cause prejudice to the decision-making process on future proposals of a similar nature, and thus seriously undermine the institution's decision-making process.

The General Secretariat must therefore refuse access to this document³.

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.

We have also looked into the possibility of releasing parts of the document. However, as the exceptions to the right of access apply to its entire content, the General Secretariat is unable to give partial access to this document⁴.

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 your reasons⁵.

Yours sincerely,

Fernando Florindo

Enclosure

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

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

⁵ Council documents on confirmatory applications are made available to the public. According to data protection rules at EU level (Regulation (EU) 2018/1725), if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

[E-mail message sent to access@consilium.europa.eu on 1 September 2020 - 22:39]

From: **DELETED**

Sent: Tuesday, September 1, 2020 10:39 PM

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

Subject: Re: Réf. 20/1400-ld/nb

Good evening,

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, I should like you to reconsider my request for access to 6934/20.

My reason for making the request is as follows: in your letter of 1 September refusing access you state that its publication would ‘seriously undermine’ the Council’s decision-making process. You are therefore basing your refusal on Article 4(3) of Regulation 1049/2001, which specifies that ‘access to a document, drawn up by an institution for internal use (...) shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process’. However, paragraph 7 of the same article states that ‘the exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document’. Yet, as you stated yourself in your letter of 1 September, 6934/20 is a ‘preparatory document’ that ‘resulted in Council Decision (EU) 2020/430 of 23 March 2020’ – which has itself subsequently been extended several times and remains in force today. The period in which you could invoke Article 4(3) to justify your refusal has thus elapsed.

Thank you.

Best regards,

DELETED
