



Council of the  
European Union

Brussels, 26 November 2019  
(OR. en)

14531/19

INF 319  
API 164

**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 38/c/01/19

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 8 November 2019 and registered the same day (Annex 1);
- reply from the General Secretariat of the Council dated 21 November 2019 (Annex 2);
- confirmatory application dated 21 November 2019 and registered the same day (Annex 3).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on November 8, 2019 15:49 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: Academia

On behalf of: **DELETED**

Address: **DELETED**

Telephone:

Mobile:

Fax:

Requested document(s): The document I would like to request is from the Legal Service of the Council related to the Directive on the protection of persons reporting on breaches of Union law. From what I have found, the document should have been made around December 2018. I could not find any other information. This document is extremely important for my PhD thesis.

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French



**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, 21 November 2019

**DELETED**

Email: **DELETED**

Ref. 19/2329-rh/ns

Request made on: 08.11.2019

Dear **DELETED**,

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

Please find attached a partially accessible version of document **14620/18**.<sup>2</sup>

However, I regret to inform you that full access cannot be given for the reasons set out below.

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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).

<sup>2</sup> Article 4(6) of Regulation (EC) No 1049/2001.

Document **14620/18**, dated 14 December 2018, comprises an opinion of the Council Legal Service, on the Commission proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law ("whistleblowers" proposal). The requested opinion provides detailed analysis on the legal bases of the proposal and therefore contains legal advice.

The decision-making process in question has not been finalised to date and the subject legislative act has not yet been adopted. In addition, the issues analysed in the requested opinion are complex and have formed an important part of the basis for the discussions on the legislative file.

Under these circumstances, disclosure of the legal advice at this stage would risk compromising the capacity to reach a final decision on the dossier and thus undermine the decision-making process pursuant to Article 4(3) of Regulation (EC) No **1049/2001** of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Moreover, the legal advice covered by this opinion deals with issues which are particularly wide in scope and contentious. In particular, the analysis on the question of the appropriate legal bases for the proposal provided in the requested opinion goes beyond the legislative file in question and could be transposed in other similar contexts. The legal advice is therefore sensitive. In light of the above, disclosure of the requested document would 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. Moreover, 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. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences.

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

In the view of the foregoing, the General Secretariat of the Council is unable to grant you full access to this document. However, in accordance with Article 4(6) of Regulation (EC) No. 1049/2001, you may have access to its paragraphs 1, 4 (with the exception of footnote 7) and 5 to 11 to which public access has already been granted.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>3</sup>

Yours sincerely,

Fernando FLORINDO

(Enclosure)

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<sup>3</sup> Article 7(2) of Regulation (EC) No 1049/2001.  
Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EU) No 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](mailto:access@consilium.europa.eu) on 21 November 2019 - 12:15]

**From:** **DELETED**

**Sent:** Thursday, November 21, 2019 12:15 PM

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

**Subject:** Re: Ref. 19/2329-rh/ns

Good morning,

I would like to thank for your reply. Whilst I understand your reasoning, I would like to ask you to reexamine my application to access the document. As a PhD researcher on this issue, it would be of great importance for my work to have your opinion. As the Directive is adopted and it will be soon published in the Official Journal, I do not see the reason why this document should be restricted when it directly concerns the legislative procedure. In addition, restriction to the document will impede the academic community from understanding the negotiations between the Parliament and the Council on this sensitive issue.

I would like to thank you for your time and I am sorry for the inconvenience caused.

Best regards,

**DELETED**

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