



Council of the
European Union

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Eingelangt am 29/01/21

Brussels, 28 January 2021
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5121/21

INF 1
API 1

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 01/c/01/21

Delegations will find attached the:

- Letter sent to the General Secretariat of the Council on 23 November 2020 and registered on the same day (Annex 1);
- reply from the General Secretariat of the Council dated 6 January 2021 (Annex 2);
- confirmatory application dated 6 January 2021 and registered on the same day (Annex 3).

[Email sent to the General Secretariat of the Council on 23 November 2020 at 9:41]

From: Peter <ask+request-8804-e1d7a702@asktheeu.org>
Sent: Monday, November 23, 2020 9:41 AM
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Subject: access to documents request - Council trilogue docs RDE

Dear Madam, Sir

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

The documents related to the trilogue negotiations on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information

These should include at least:

ST 12384 2020 INIT (30-10-2020)
ST 12384 2020 REV 1 (03-11-2020)

Sincerely,
Peter Teffer

postal address:

Peter Teffer
Ekko Voorkamer
Bemuurde Weerd WZ 3
3513 BH Utrecht
The Netherlands



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, 6 January 2021

Mr Peter Teffer
Email: ask+request-8804-e1d7a702@asktheeu.org

Ref. 20/2175-em/ns

Request made on: 23.11.2020
Deadline extension: 13.12.2020

Dear Mr Teffer,

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

I regret to inform you that access to documents **12384/20** and **12384/20 REV1** cannot be given for the reasons set out below.)

Document **12384/20** is a note dated 30 October 2020 from the General Secretariat of the Council to the Coreper in preparation of the second trilogue meeting with representatives of the European Parliament on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (file 2019/0101 COD). Document **12384/20 REV1** is a revised version of the note dated 3 November 2020.

The two documents outline the progress in informal negotiations with the representatives of the European Parliament and the European Commission and put forward suggestions regarding some

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).

substantial political issues of the proposal with a view to attain a revised mandate from the Coreper and to receive guidance for the next trilogues. The two documents contain 4-column tables reflecting the Commission proposal, the co-legislators' positions and the Presidency compromise text set out in the fourth column of the table.

Negotiations with the European Parliament on this file have been difficult and no formal agreement has yet been reached between the Council and the European Parliament. Several political issues remain open as Council's proposals for a compromise proved to be insufficient to reach an agreement with the European Parliament in the last trilogues under the German Presidency of the Council. Negotiations have to be pursued under Portuguese Presidency of the Council. Disclosure to the public of the Council's compromise proposals at this stage would affect the negotiating process and diminish the chances of reaching an agreement with the European Parliament. Disclosure of the documents would therefore seriously undermine the decision making-process of the Council. As a consequence, the General Secretariat has to refuse access to the documents at this stage.²

Having examined the context in which the document was drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in (full) disclosure of the document in question.

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.³

Yours sincerely,

Fernando FLORINDO

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

³ 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.

[Letter and email sent to access@consilium.europa.eu on 6 January - 16:13]

From: Peter <ask+request-8804-e1d7a702@asktheeu.org>

Sent: Wednesday, January 6, 2021 4:13 PM

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

Subject: Internal review of access to documents request - Council trilogue docs RDE

Dear Madam, Sir,

Please pass this on to the person who reviews confirmatory applications. I am filing the following confirmatory application with regards to my access to documents request related to the trilogue negotiations on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.

I filed this request on 23 November 2020. It was registered as Ref. 20/2175.

The General Secretariat has fully refused access to the documents. The reason for refusal is that negotiations with the European Parliament on this file "have been difficult" and that disclosure "would affect the negotiating process and diminish the chances of reaching an agreement with the European Parliament". Therefore, the General Secretariat concludes that publication of the documents would undermine the decision making-process.

I'm surprised and frustrated to see this outdated argument being presented in January 2021, almost three years after the Court of Justice of the EU ruled in case T-540/15, known as the case *De Capitani v European Parliament*.

As the Court said in March 2018, trilogue documents "are related to legislative procedures and cannot, in principle, be treated differently from other legislative documents". The Court concluded that the trilogue tables form part of the legislative process.

The Court explicitly said that "as regards the assertion that access, during a trilogue, to the fourth column of the documents at issue would increase public pressure on the rapporteur, shadow rapporteurs and political groups, that, in a system based on the principle of democratic legitimacy, co-legislators must be held accountable 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 in relation to a particular provisional legislative proposal or agreement agreed in the course of a trilogue and reflected in the fourth column of a trilogue table forms an integral part of the exercise of EU citizens' democratic rights, particularly since, as noted in paragraph 72 above, such agreements are generally subsequently adopted without substantial amendment by the co-legislators."

Summarising: trilogue documents are part of the legislative process, and citizens have a right to access them. The fact that talks are ongoing or "difficult" is irrelevant.

I was under the impression that the Council had embraced this position, and had decided to take the Court's ruling into consideration in relation to an access to trilogue documents.

After all, the Council has previously released 4-column tables related to ongoing trilogues. For example, on 14 December 2018 (Ref. 18/2101-em/nb) the Council released trilogue documents related to the Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market. A political agreement between Council and Parliament was not yet reached at the time, this was only announced on 13 February 2019.

If trilogue documents on that copyright file can be released without undermining the decision-making process, so can the documents I have requested on 23 November 2020.

Finally, please note that my request was to receive all documents related to the trilogue negotiations. This should include, as mentioned in my original request, "at least" ST 12384 2020 INIT and ST 12384 2020 REV 1, but also other documents I had not identified by number.

Let me conclude by including one more quote from the Court of Justice. The Court said "it is precisely openness in the legislative process that contributes to conferring greater legitimacy on the institutions in the eyes of EU citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated. It is in fact rather a lack of information and debate which is capable of giving rise to doubts in the minds of citizens, not only as regards the lawfulness of an isolated act, but also as regards the legitimacy of the decision-making process as a whole".

I cannot speak for the confidence of all EU citizens, but if the Council wants to increase **my** confidence - in the EU in general, and in the Council in particular - it should swiftly revert the General Secretariat's decision and provide wide access to the requested documents. It would also help if my confirmatory application is handled within the deadline of 15 working days, instead of extending the deadline with no good reason other than apparent stalling tactics ("conducting consultations" is not a valid reason that could constitute an "exceptional case" as defined in articles 7.3 and 8.3).

Sincerely,

Peter Teffer
