



Council of the  
European Union

054205/EU XXVII. GP  
Eingelangt am 15/03/21

Brussels, 15 March 2021  
(OR. en)

7046/21

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API 30

#### NOTE

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 09/c/01/21

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 6 February 2021 and registered on 8 February 2021 (Annex 1);
- reply from the General Secretariat of the Council dated 5 March 2021 (Annex 2);
- confirmatory application dated 12 March 2021 (Annex 3).

**[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 6 February 2021 - 13:46 using the electronic form available in the Register application]**

From: **DELETED**

Sent: Saturday, February 6, 2021 14:23 PM

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

Subject: access to documents request - New Pact on Migration and Asylum

Dear Council of the European Union,

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:

1. All legislative files marked "Limite" dealing in any shape or form with issues linked to "return sponsorships"
2. All agendas, accompanying papers, non-papers, summary records, compromise texts, notes to delegations dealing in any shape or form with "return sponsorships"
3. Legal opinions dealing in any shape or form with "return sponsorships"
4. 'indicative votes'/votes on preparatory acts dealing in any shape or form with "return sponsorships"
5. Most recent 4 column positional document of the New Pact on Migration and Asylum
6. The identity of Member States taking positions in preparatory bodies dealing in any shape or form with "return sponsorships"

Please note that Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents further provides that "[i]n particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible".

The European Ombudsman has also noted that legislative documents "must be made proactively available by the 'EU legislator' so as to ensure the widest possible public access."

I hope you will take this into consideration in light of the ruling of maladministration against the Council by the European Ombudsman when it comes said legislative process.

Yours faithfully,

**DELETED**



**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, 5 March 2021

Mr **DELETED**  
Email: **DELETED**

Ref. 21/0281-rh/ns

Request made on: 06.02.2021  
Registered on: 08.02.2021  
Deadline extension: 01.03.2021

Dear **DELETED**,

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

Please find attached document **6088/21** and partially accessible version of document **13045/20**.<sup>2</sup>

I regret to inform you that access to documents **13261/20**, **14276/20**, **WK 13579/20 INIT + REV 1** and **5755/21** we identified as the most corresponding to your request from the variety of the existing documents mentioning the return sponsorship cannot be given for the reasons set out below.

Document **13261/20** of 25 November 2020 is a note from the Presidency to the Working Party on Integration, Migration and Expulsion (Expulsion) on *Presidency discussion paper: Requirements for functioning return sponsorships in practice*. Document **14276/20** of 18 December 2020 is a note from the Presidency to the Working Party on Integration, Migration and Expulsion (Expulsion) on *Presidency progress report: Outcome of IMEX Working Party discussions on return sponsorship*.

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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> Pursuant to the Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39–98), the personal data contained in this document have been removed.

Documents **WK 13579/20 INIT + REV 1** of 25 + 27 November 2020 are working documents on *Commission's proposal for return sponsorship - Questions from the Members States*. Document **5755/21** of 29 January is a note from the Presidency to delegations on *Presidency progress report: Outcome of IMEX Working Party discussions on return sponsorship*. They all concern a sensitive issue which is still under discussion within the Council.

For the Council to reach an agreement on the Asylum and Migration Management Regulation (AMR) which is currently being negotiated and in which the proposal for return sponsorship is included, its Member States held consultations and exploratory talks. To reveal the content of such talks before a common position has been reached would interfere with the negotiations and would jeopardise the conclusion of an agreement within the Council.

The disclosure of the texts 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 documents 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 these documents<sup>3</sup>.

Having examined the context in which the documents were drafted, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in their disclosure.

We have also looked into the possibility of releasing parts of the documents<sup>4</sup>. However, as the exception to the right of access applies to their entire content, the General Secretariat is unable to give partial access at this stage.

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<sup>5</sup>.

Please note that there are no 4-column documents of the New Pact on Migration and Asylum at this stage as negotiations with the European Parliament haven't started yet.

Yours sincerely,

Fernando FLORINDO

Enclosures: 2

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

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

<sup>5</sup> 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 12 March 2021 - 11:35]**

Dear Council of the European Union,

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 'New Pact on Migration and Asylum'.

Access to the following documents 13261/20, 14276/20, WK 13579/20 INIT + REV 1 and 5755/21 were denied on the basis that it "seriously undermine the decision-making process of the Council".

I believe this to be a disproportionate restriction on citizens' right to the widest possible access to legislative documents.

Furthermore, the principle on the 'widest possible public access' has been established in EU case-law: see Joint Cases C-39/05 P and C-52/05 P Sweden and Turco v. Council [2008] ECLI:EU:C:2008:374, para. 34 and Case C-280/11 P Council v. Access Info Europe [2013] ECLI:EU:C:2013:671, para. 27.

I would like to remind you that the European Ombudsman strategic inquiry OI/2/2017/TE found maladministration with the Council when it comes to legislative transparency.

In particular, she criticised the Council's failure to record systematically the identity of Member States taking positions in preparatory bodies, and the widespread practice of restricting access to legislative documents while the decision-making process is ongoing (the so-called 'LIMITE' marking).

I should also like to point out that 84% of requests for public access to documents marked as 'LIMITE', and relating to on-going legislative procedures in 2015, were in fact granted.

In the case of the Data Protection Regulation, 310 out of 321 'LIMITE' documents related to the file were made fully accessible upon request while negotiations were still ongoing.

This means that the vast majority of legislative documents was ultimately not covered by any of the exceptions to disclosure under the EU's rules on public access to documents. I fail to understand why these documents, which I requested, are not.

Yours faithfully,

**DELETED**