



Council of the
European Union

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Brussels, 20 April 2021
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NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 13/c/01/21

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 2 March 2021 and registered on 3 March 2021 (Annex 1);
- reply from the General Secretariat of the Council dated 19 April 2021 (Annex 2);
- confirmatory application dated 19 April 2021 and registered on 20 April 2021 (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 2 March 2021 - 19:11 using the electronic form available in the Register application]

From: **DELETED**

Sent: Tuesday, March 2, 2021 7:11 PM

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

Subject: Consilium - Electronic Request for Access to documents [ENGLISH]

DELETED

Family name **DELETED**

First name **DELETED**

E-mail **DELETED**

Requested document(s): ST 11010 Cor, 7306, 6646 of 2002
ST 7920, 5802, 5609 of 2003.



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, 19 April 2021

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Email: **DELETED**

Ref. 21/0545-mj/vk

Request made on: 02.03.2021
Registered on: 03.03.2021
Deadline extension: 24.03.2021

Dear **DELETED**,

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

Please find attached documents **6646/02 and 11010/02 COR 1** as well as partially accessible versions of documents **7306/02, 11010/02, 5609/03 DCL 1 and 5802/03 DLC 1**.² However, I regret to inform you that full access cannot be given for the reasons set out below.

Document **7306/02** is an opinion of the Council legal service on the access by the European Parliament or individual MEPS and political groups to the EU's common positions for the accession negotiations. This opinion was issued as a response to a request for advice addressed to the Council legal service by the Working Party on Enlargement to check whether the European Parliament or individual MEPs and political groups were entitled to have access to the EU's common positions for the accession negotiations.

Despite the passing of time, the legal advice covered in pages 2 to 4 (except for the last paragraph on page 4) and point a) on page 9 of this opinion deals with issues of systemic nature and

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).

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

interinstitutional relevance that have not been settled and still remain controversial. The legal advice reflected in this part of the opinion is sensitive, as it would make known to the public 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. 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 pressure.

Disclosure therefore of the legal advice on pages 2 to 4 (except for the last paragraph on page 4) and point a) on page 9) would undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001.

As regards the existence of an overriding public interest in disclosing the requested document in relation to the interests in having a frank, objective and comprehensive legal advice 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 interests so as to justify full disclosure of the document.

Document 11010/02 is an opinion of the Council legal service on a proposal for a Council recommendation concerning the application of legislation governing health and safety at work to self-employed workers.

Document 11010/02 COR 1 is a corrigendum to the opinion of the Legal Service.

The opinion was issued in response to a request made by the Working Party on Social Questions about whether Article 308 TEC (current Article 352 TFEU) was the appropriate legal basis for the above mentioned proposal and whether the content of the instrument was consistent with the form of a recommendation.

Despite the passing of time, the legal advice covered in paragraphs 6 to 11 of this opinion deals with issues which are key elements for the analysis carried out in the context of other files currently under examination by the Council. In such circumstances, the disclosure of the legal advice on those paragraphs would render public a preliminary assessment of certain complex legal issues concerning the competence of the EU and Member States and the nature of the EU competences. The legal advice is however still topical and should be protected in the current conjuncture. It should also be noted that the issues dealt with in the opinion such as those relating to competence are wide in scope and have implications that go beyond the case at hand. Furthermore they are highly litigious and prone to litigation, as the case law of the Court of Justice shows. Disclosure of the legal opinion could therefore affect the ability of the legal service to effectively defend decisions taken by the Council before the Union courts.

On this basis, disclosure of paragraphs 6 to 11 of document 11010/02 would undermine the protection of the legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001.

As regards the existence of an overriding public interest in disclosure in relation to the protection of legal advice under Regulation (EC) No 1049/2001, the General Secretariat considers that, on balance, the principle of transparency which underlines the Regulation would not, in the present case, prevail over the abovementioned interest as to justify full disclosure of the document.

As abovementioned, you may have access to document **11010/02 COR 1**.

I regret to inform you that access to document **7920/03** cannot be given for the reasons set out below.

Document **7920/03** contains an opinion of the Legal Service on visa requirements for holders of diplomatic, official-duty and other official passports.

The opinion relates to the Union's external relations. Its disclosure would undermine the protection of the public interest as regards international relations, as it would reveal the legal assessment on the constraints and the procedures to be followed for exempting holders of diplomatic, official-duty and other official passports from the visa requirements. Therefore, the disclosure of this document would make public the ongoing reflections on a particular sensitive issue for the diplomatic relations between Member States and/or the EU and third countries. As a consequence, the disclosure of the document would greatly affect the Union's and Member States' capacity to defend effectively its interests vis-à-vis third countries.

Also, disclosure would have a detrimental effect to their relationship with third countries and affect the perception of the Members States and the Union in the international arena.

Where disclosure of a document undermines the public interest as regards international relations, refusal of access by the institution is mandatory in accordance with established case-law (Case C-266/05 P Sison v Council, EU:C:2007:75 paragraph 46, Case T-851/16 Access Info Europe v Commission, EU:T:2018:69, paragraph 39 and Case T-852/16 Access Info Europe v Commission, EU:T:2018:71, paragraph 39).

In view of the foregoing, disclosure must therefore be refused according to Article 4(1)(a), third indent of Regulation (EC) No 1049/2001.

As regards the possibility of granting partial access pursuant to Article 4(6) of the Regulation (EC) No 1049/2001, it is to be noted that the above exception applies to the entirety of the document.

Document **5609/03 DCL 1** contains a report of the Asia Oceania Working Group of 9 January 2003.

You may also have access to this document except to the part related to the Korean peninsula (end of page 4 and beginning of page 5).

Release of the information contained in this part of the document would have a negative impact on the relations between the European Union and the Korean peninsula as it contains some sensitive information the disclosure of which would undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to this part of the document.³

However, as abovementioned, pursuant to Article 4(6) of the Regulation, you may have access to the rest of the document which is not covered by this exception.

Document **5802/03 DLC 1** contains a report of the Africa Working Group meeting of 6 February 2003.

You may have access to this document except to some parts which contain internal information and assessments the release of which would weaken the position of the EU and affect relations with the relevant third parties.

Disclosure of these parts of the document would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to these parts of the document.⁴

However, as abovementioned, pursuant to Article 4(6) of the Regulation, you may have access to the rest of the document which is not covered by this exception.

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.⁵

Yours sincerely,

Fernando FLORINDO

Enclosures: 6

³ Article 4(1)(a), third indent, of Regulation (EC) No **1049/2001**.

⁴ Article 4(1)(a), third indent, of Regulation (EC) No **1049/2001**.

⁵ 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 on 19 April 2021 - 22:36]

From: **DELETED**

Sent: Monday, April 19, 2021 10:36 PM

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

Subject: Re: Ref. 21/0545-mj/vk

I want to file a confirmatory application regarding the Legal Service opinion regarding document 7920/03.
