



**Council of the European Union**  
General Secretariat

**Brussels, 28 April 2021**

**CM 2791/21**

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### **COMMUNICATION**

#### **WRITTEN PROCEDURE**

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Subject: PUBLIC ACCESS TO DOCUMENTS  
– Confirmatory application No 09/c/01/21  
– Outcome of the written procedure initiated by CM 2790/21

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Delegations are informed that the written procedure opened by CM 2790/21 of 21 April 2021 was completed on 27 April 2021 and that the majority of delegations agreed to the approval of the Council's reply to the above-mentioned confirmatory application, as set out in document 7047/21.

The joint statement by Poland, Czechia, Hungary and Slovakia, and that of Sweden, are reproduced in the annex to this CM.

**Statement by Sweden**

Sweden cannot concur with the draft reply to confirmatory application No 09/c/01/21 that disclosure of the documents WK 13579/20 and WK 13579/20 REV 1 would seriously undermine the ongoing decision-making process protection (Article 4(3), first subparagraph of Regulation (EC) 1049/2001) or the public interest with regard to international relations (Article 4(1)(a), third indent of Regulation (EC) No 1049/2001). Considering the restrictive interpretation of this exception by the Court regarding documents that relate to legislative procedures (De Capitani case, T-540/15), Sweden believes that it is not sufficiently motivated that there is an actual and concrete risk that full disclosure would seriously undermine the institution's ongoing decision-making process and this risk is reasonably foreseeable and not only hypothetical. Furthermore, Sweden believes there is an overriding public interest in disclosing the documents.

**Statement by Poland, Czech Republic, Hungary and Slovakia**

Poland, Czechia, Hungary and Slovakia are of the view that since the legislative process regarding the New Pact on Migration and Asylum has not been finalized and taking into account the highly sensitive nature of the subject matter of the ongoing discussions on the issue of return sponsorship, there is a risk that the Council's decision-making process in the meaning of Article 4(3) of Regulation 1049/2001 might be seriously undermined by the disclosure of the documents 13261/20, 14276/20 and 5755/21. Disclosure of these documents at this stage would seriously affect the chances of finding a compromise and jeopardise the conclusion of an agreement within the Council. In this case, the risk of undermining the institution's ongoing decision-making process is not only hypothetical. Furthermore, notwithstanding the fact that the documents in question do not refer specifically to individual positions of Member States, they reveal details, including possible weaknesses of the proposed future system which may directly affect the security of the Member States and the EU as a whole and therefore that information is highly sensitive especially in terms of serious external challenges that the EU has been facing and has to face in the future (such as e.g. illegal migration, migrant smuggling). Disclosure of the requested documents containing information of that kind would therefore involve a concrete risk of undermining the capacity of the EU to address those challenges and ultimately to defend public security. Consequently, the documents in question fall under also the exception relating to the protection of the public interest as regards public security pursuant to Article 4(1)(a) of Regulation No 1049/2001. That is why we are opposed to grant access to the above mentioned documents.