



Council of the
European Union

Brussels, 2 June 2021
(OR. en)

9418/21

INF 170
API 94

NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents
- Confirmatory application No 24/c/01/21

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 13 April 2021 and registered on the same day (Annex 1);
- reply from the General Secretariat of the Council dated 31 May 2021 (Annex 2);
- confirmatory application dated 1 June 2021 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 13 April 2021 - 13:33 using the electronic form available in the Register application]

From: **DELETED**

Sent: Tuesday, April 13, 2021 13:33 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**

Occupation **DELETED**

On behalf of **DELETED**

Full postal address **DELETED**

Mobile telephone **DELETED**

Requested document(s): of all kinds and in any language available that pay reference to an alleged Slovenian "non-paper" and to possible Slovenian initiatives concerning the redrawing of borderlines on the Western Balkans and to related discussions. This topic was widely discussed in international media in recent days.



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, 31 May 2021

DELETED

Email: **DELETED**

Ref. 21/0821-rh/vk

Request made on: 13.04.2021

Deadline extension: 04.05.2021

Dear **DELETED**,

Thank you for your request for access to "documents of all kinds and in any language available that pay reference to an alleged Slovenian "non-paper" and to possible Slovenian initiatives concerning the redrawing of borderlines on the Western Balkans and related discussions".

The General Secretariat of the Council has been able to identify only one document as falling within its scope.

After careful examination, I regret to inform you that access to this document cannot be granted, as such request clearly falls within the exception provided for under the third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001, according to which: "[t]he institutions shall refuse access to a document where disclosure would undermine the protection of (...) the public interest as regards" (emphasis added), notably, "international relations".

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask for the review of 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.

Yours sincerely,

Fernando FLORINDO

[E-mail message sent to access@consilium.europa.eu on 1 June 2021 - 12:45]

From: **DELETED**

Sent: Tuesday, June 1, 2021 12:45 PM

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

Subject: Re: Ref. 21/0821-rh/vk

Dear colleagues!

Concerning your refusal to provide a document that pays reference to an alleged Slovenian "non-paper" and to possible Slovenian initiatives concerning the redrawing of borderlines on the Western Balkans and related discussions:

I am filing the following confirmatory application with regards to my access to documents request.

It should be noted that the principle is that the public is to have access to the documents of the institutions and the power to refuse access is the exception. A decision denying access is valid only if it is based on one of the exceptions provided for in Article 4 of Regulation 1049/2001. According to settled case-law, those exceptions must be construed and applied strictly so as not to defeat the application of the general principle enshrined in that regulation (Joined Cases T-110/03, T-150/03 and T-405/03 *Sison v Council* [2005] ECR II-1429, paragraph 45; see, by analogy, *Case T-211/00 Kuijerv Council*[2002] ECR II-485, paragraph 55).

The Court of Justice of the EU has said that the risk of jeopardizing international relations must be reasonably foreseeable and not purely hypothetical and that the institution must show that the document requested specifically and actually undermines the interest protected by the exception (see *C-506/08 P*, *Case C-576/12 P*).

Furthermore, the case law and European Ombudsman's decisions show that international relations as a policy field should not be treated as a categorical exception. The exception on international relations does not apply simply because the subject matter of a document 'concerns' international relations. On the contrary, it is necessary to show that, based on the content of a document, its disclosure would undermine the public interest as regards international relations. (see European Ombudsman Case: 119/2015/PHP 04 November 2015; OI/10/2014/RA 06 January 2015; Case: 689/2014/JAS 02 September 2015.)

In your reply, you did not provide any reasoning as to why disclosure should undermine public interest as regards international relations. On the contrary, I would like to point out the substantial media interest in the "non-paper" and more generally the Slovenian position on the matter ahead of the upcoming Slovenian Council presidency. Hence I would urge to review the document in question as to whether it can be released at least partially including certain redactions.

I would like to add that I make my request as journalist, therefore acting in my function as public watchdog as set out in jurisprudence by the European Court of Human Rights.

Regards,

DELETED