



**Brussels, 16 August 2021  
(OR. en)**

**11272/21**

**INF 240  
API 133**

**NOTE**

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| From:    | General Secretariat of the Council                                     |
| To:      | Delegations                                                            |
| Subject: | Public access to documents<br>- Confirmatory application No 34/c/02/21 |

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Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 7 May 2020 (Annex 1). As this request concerns more than 200 legal service opinions, pursuant to Article 6 (3) of Regulation (EC) No 1049/2001, it was agreed with the applicant that it will be treated in separate requests (one covering each year of the requested documents); the request related to documents of 2009 was registered on 31 May 2021;
- the reply from the General Secretariat of the Council dated 12 August 2021 (Annex 2);
- the confirmatory application dated 12 August 2021 and registered on 13 August 2021 (Annex 3).

**[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 7 May 2020 - 01:00 using the electronic form available in the Register application]**

From: **DELETED**

Sent: Thursday, May 7, 2020 1:00 AM

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

Subject: Electronic Request for Access

Title/Gender: Mr - Mr

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of:

Address:

Telephone:

Mobile:

Fax:

Requested document(s): 12866, 10112, 9320, 9228, 6442 of 2019

12757, 9834, 9674, 8336, 8334, 8268, 8134, 8048, 7502, 7334 of 2018

14876, 14323, 13634, 12820, 12740, 11543, 8445, 7885, 6194, 6189, 5151 of 2017

15698, 14745, 13491, 12948, 12776, 12622, 12406, 12091, 11582, 11176, 9007, 8753, 7862 of 2016

9540, 5818 of 2015

15506, 14108, 13299, 12931, 9468, 8914, 7408, 6596, 5647 of 2014

16952, 15488, 15192, 14217, 14212, 13829, 13765, 9990, 9303, 9289, 8706, 8027, 8020, 7726, 7682, 5655 of 2013

17407, 16129, 14756, 14723, 14402, 12926, 11163, 10661, 10630, 9929, 8433, 7865, 7039, 5551 of 2012

18624, 16784, 15595, 15187, 13641, 13638, 11668, 10092, 9401, 9039, 8850, 8775, 5711 of 2011

15747, 15733, 12964, 12518, 11261, 10914, 10145, 9754, 7949, 7827, 7149, 6379 of 2010

17553, 17039, 16323, 11346, 10790, 10557, 9431, 7538, 6096, 6083 of 2009

17472, 16282, 15554, 15196, 12814, 10243, 7534, 6929, 6578, 6413, 5162 of 2008

14243, 13780, 13616, 12908, 12648, 9408, 7667, 7341, 6838, 6543 of 2007

16659, 15832, 15397, 14707, 12800, 12016 of 2006

16020, 15546, 14824, 13160, 12327, 9757, 8623, 6982, 6683, 5433 of 2005

15750, 15749, 14498, 14021, 13663, 10982, 7323, 7227, 6963, 6860, 6489, 6412, 6283, 5917 of 2004

14890, 14181, 13637, 11472, 7920, 6350, 6285, 5915, 5418 of 2003

13713, 13650, 13585, 12471, 11876, 11010, 10055, 9438, 9300, 8853, 8485, 8169, 7306, 7259, 7205, 6646, 6321, 5666 of 2002

15291, 14695, 14677, 12922, 12832, 12543, 9693, 9340, 9201, 8800, 7502, 6907, 5940 of 2001

14629, 14268, 14248, 14138, 13772, 12686, 12517, 12364, 11687, 11570, 11513, 10794, 10552, 9631, 9599, 9374, 9035, 8926, 8788, 8488, 8332, 7476, 7177, 6913, 6647 of 2000

14117, 13926, 13512, 13321, 13039, 12443, 12105, 11454, 10364, 9983, 9731, 8635, 7907, 7837, 7829, 7489, 7430, 6615 of 1999

in all versions (eg Rev, Add, Cor, Init and drafts) that have not been made public (ie I'm not asking for access to those that are already partially public).

1st preferred linguistic version: EN - English

2nd preferred linguistic version: ES - Spanish



**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, 12 August 2021

**DELETED**

Email: **DELETED**

Ref. 21/1141-mj/mf

Request made on: 31.05.2021

Dear **DELETED**,

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

According to our exchange of emails of 14 and 15 May 2020 regarding your request for access to more than 200 legal service opinions, we have now finished the examination of the documents of 2009.

Full public access is granted to:

- Document **6083/09** dated 4 February 2009;
- Document **6096/09** dated 4 February 2009;
- Document **7538/09** dated 12 March 2009;
- Document **10557/09** dated 3 June 2009;
- Document **16323/09** dated 19 November 2009;
- Document **17039/09** dated 7 December 2009.

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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).

You may also have access to the greatest part of document **11346/09** with the exception of the second and third sentence of its paragraph 10, its paragraphs 22 to 24 and its paragraphs 28 and 29.

Document **11346/09** contains a legal opinion on the Proposal for a Council Decision authorising Member States to ratify, in the interests of the European Community, the Work in Fishing Convention, 2007, of the International Labour Organisation. The opinion replies on whether, pursuant to Articles 1 and 2 of the draft Decision, the ratification of the Work in Fishing Convention, 2007, of the International Labour Organisation (Convention 188) constituted an obligation or simply an option for Member States.

The requested opinion contains legal advice, which pertains to a decision-making process that has been finalised. Nevertheless, the legal advice covered by this opinion goes beyond the context of the decision-making process in question and is of relevance for discussions on the ILO Convention on Violence and Harassment 190, which are currently ongoing. In the light of those discussions, full disclosure of the advice and the issues with which it deals would undermine the protection of the public interest as regard international relations under Article 4(1)(a) (third indent) of Regulation (EC) No **1049/2001**. It would adversely affect the negotiations and would hence risk compromising the capacity to reach an agreement on the dossier within the Council and thus also undermine the decision-making process pursuant to the first subparagraph of Article 4(3) of Regulation (EC) No **1049/2001**.

Moreover, the legal advice has an horizontal value and deals with issues that are broad in scope. The legal advice is therefore sensitive. Full disclosure of such a document would therefore undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No **1049/2001**. It would make known to the public an 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. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. 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 influences.

The General Secretariat of the Council is also unable to grant you full public access to documents 9431/09 and COR1, 10790/09 and 17553/09 for the reasons set out below.

Document **9431/09** is an opinion of the Council Legal Service examining the question of the appropriate legal basis for the Directive on the application of patient's rights in cross-border healthcare. The document consequently contains legal advice in paras 11 to 55.

The decision-making process in question is by now closed. However, the legal issues raised in the legal opinion are of a particularly wide scope going beyond the context of the legislative process in question. In fact, the issue of the appropriate legal basis in fields of action, like public health, where the Union coordinates and encourages Member States' action, is relevant to at least two legislative files currently under discussion.

Document **10790/09** is an opinion of the Council Legal Service which examines the compatibility with WTO law of the Proposal for a Council Regulation on the protection of animals at the time of killing.

Document **17553/09** contains an opinion of the Council Legal Service on the compatibility with WTO law of the Proposal for a Regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market.

The legal advice covered by those opinions deals with issues which are broad in scope and contentious. Indeed, the reasoning developed in several parts of the opinions may easily be employed in other areas, due to the horizontal character of the analysis. The opinions also provide detailed argumentation in an area where there is a litigation risk. The legal advice is therefore sensitive.

Full disclosure of the abovementioned opinions would therefore undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001. It would make known to the public an internal analysis 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. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. 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 influences.

In view of the foregoing, the General Secretariat of the Council is unable to grant you full access to document 9431/09 and COR 1, document 10790/09 and document 17553/09.

However, in accordance with Article 4 (6) of the Regulation (EC) No 1049/2001, you may have access to :

paragraphs 1 to 10 of document **9431/09**;

paragraphs 1 to 4 of document **10790/09**;

paragraphs 1 to 6, 8 to 9, 14, 16, 18 to 20, 24 to 25, 29, 31 to 33 and 36 to 37 of document **17553/09**.

As regards the existence of an overriding public interest in disclosure, 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 documents.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>2</sup>

Yours sincerely,

Fernando FLORINDO

Enclosures : 10

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<sup>2</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 August 2021 - 17:56]

**From:** **DELETED**

**Sent:** Thursday, August 12, 2021 5:56 PM

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

**Subject:** Re: Transparency Access to Documents sent you Ref. 21/1141-mj/mf via WeTransfer

I would like to file a confirmatory application. These documents may be sensitive due to their potential applicability in other areas, but the arguments involved are not as contentious as to have brought litigation or drawn out battles between the member states or the institutions.

**DELETED**

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