



Council of the
European Union

Brussels, 13 December 2021
(OR. en)

14950/21

INF 319
API 172

NOTE

From: General Secretariat of the Council

Subject: Public access to documents
- Confirmatory application No 42/c/03/21

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 2011 was registered on 29 September 2021;
- the reply from the General Secretariat of the Council dated 26 November 2021 (Annex 2);
- the confirmatory application dated 9 December 2021 and registered on the same day. (Annex 3).

[E-mail message sent to 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>

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, 26 November 2021

DELETED

Email: **DELETED**

Ref. 21/1606-mj/vk

Request registered on: 29.09.2021

Dear **DELETED**,

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

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 2011.

Full public access is granted to:

- Document **5711/11**
- Document **8775/11**
- Document **9039/11**
- Documents **9401/11 INIT** and **9401/11 COR1**
- Documents **13638/11 INIT + REV 1**
- Documents **13641/11 INIT + REV 1**
- Document **15187/11**

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).

- Documents **15595/11 DCL1** + **15595/11 COR 1 DCL1**
- Documents **16784/11 INIT** + **16784/11 COR 1**
- Documents **18624/11 INIT** + **18624/11 COR 1**

Document **8850/11** of 12 April 2011 contains an opinion of the Legal Service of the Council concerning a proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. The legal opinion analyses whether the proposed Directive was compatible with the applicable data protection rules, in particular with regard to the principles of necessity and proportionality. The requested document contains legal advice, except for its paragraphs 1 to 7 and paragraph 9 which have already made publicly available in the Council's Register.

The legal advice covered by the opinion is particularly sensitive from the legal point of view and broad in scope as regards data protection. Releasing of such legal advice could affect the ability of the Legal Service to effectively defend the Directive (EU) **2016/681** of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132) before the Court of Justice of the European Union in the pending cases C-817/19 (*Ligue des droits humains*), C-148/20 (*Deutsche Lufthansa*), C-149/20 (*Deutsche Lufthansa*), C-150/20 (*Deutsche Lufthansa*), C-215/20 (*Bundesrepublik Deutschland*) and C-486/20 (*Varuh človekovih pravic Republike Slovenije*). Therefore, the requested document falls within the scope of the exception related to the court proceedings and legal advice under Article 4 (2), second indent, of Regulation (EC) No **1049/2001** of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

As regards the existence of an overriding public interest in disclosing the requested document in relation to the interests in protecting the Council's position in the ongoing judicial proceedings and 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.

Besides, apart from paragraphs 1 to 7 and 9 that are already public, the General Secretariat has not been able to identify further paragraphs that would not fall under the scope of the protection of Article 4(2), second indent of Regulation (EC) No 1049/2001.

Document **10092/11** contains an opinion of the Council Legal Service on the Commission's proposal which led to the adoption by the Council of Decision **2011/408/EU** laying down simplified rules and procedures on sanitary controls of fishery products, live bivalve molluscs, echinoderms, tunicates, marine gastropods, by-products thereof and products derived from these by-products coming from Greenland (OJ L 182 of 12.7.2011, p. 24).

While most of the document relating to a decision-making process that is now terminated shall be released, it appears after a careful assessment that paragraphs 13 to 17 of the legal opinion relate to EU external relations with certain countries and territories. The release of these paragraphs may affect the international relations of the Union in the meaning of Article 4(1)(a), third indent of Regulation (EC) No 1049/2001 as it addresses in details the special status of Greenland, vis-à-vis the Union. Besides, these paragraphs contain legal guidance of a general nature as for the legal basis to be favoured for the adoption of measures regarding this matter. Therefore, those paragraphs fall also within the field of protection of legal advice in the meaning of Article 4(2), second indent of that Regulation whereas there is no overriding interest, on balance, that would, in the present case, prevail over the above indicated interests so as to justify disclosure of those paragraphs of the requested document.

Therefore, access to document **10092/11** shall be granted with the exception of paragraphs 13 to 17 which are covered by the protection of the international relations (Article 4(1)(a), third indent of the Regulation (EC) No 1049/2001) and by the protection of legal advice (Article 4(2) second indent of that Regulation).

Document **11668/11** contains an opinion of the Council's Legal Service related to a recommendation from the Commission to the Council to authorise the Commission to negotiate an agreement between the Republic of Azerbaijan, the Republic of Turkmenistan and the European Union on the legal framework for a Trans-Caspian (Natural Gas) Pipeline System.

This document is a classified document, bearing the classification "RESTREINT UE/EU RESTRICTED" which means that the unauthorised disclosure of its contents could be disadvantageous to the interests of the European Union or of one or more of its Member States.²

The opinion analyses the extent and nature of Union competence to negotiate the above agreement. It therefore contains legal advice, except for its paragraphs 1 and 2.

The content of the document is for two reasons particularly sensitive. First, it is related to a mandate on sensitive international negotiations in the energy transport sector in Central Asia, which have not ended. If the opinion was to be publicly disclosed, some content of the negotiating mandate would also be disclosed to the negotiating counterparts of the Union. It is for that very reason that the draft negotiating mandate and the related legal opinion have both been originally classified as "RESTREINT UE/EU RESTRICTED", *i.e.* they contain information the unauthorized disclosure of which could be disadvantageous to the interests of the Union and its Member States. Second, in the requested document the Legal Service takes position on the extent and nature of Union competence in the relevant field. For both reasons, the negotiating position of the Union and its Member States could be negatively affected on the international stage if the opinion was to be released. Public disclosure of the document would therefore undermine the protection of international relations of the Union and its Member States in the meaning of Article 4(1)(a), third indent of the Regulation (EC) No 1049/2001.

Releasing the remaining non-public parts of the legal opinion at issue would also undermine the protection of legal advice in the meaning of Article 4(2), second indent, of that Regulation, since it would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that this legal advice be disclosed to the public, may lead the Council to display caution when requesting written opinions from its Legal Service, since it could find itself in a situation where it would need to defend the decision it has taken against a - potentially critical - advice given by its Legal Service. Moreover, the Legal Service could come under external pressure which could affect the way in which legal opinions are drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences. Lastly, disclosure of the legal advice would also affect the ability of the Legal Service to effectively defend before the Union courts the decisions related to this topic that the Council might adopt.

² Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU), OJ L 274, 15.10.2013, p. 1.

What is more, the issues analysed in the opinion form an important part of the basis for the discussions on this file and concern matters that are complex and politically sensitive. Disclosure of the legal advice would adversely affect the negotiations by impeding internal discussions of the Council and would hence the risk compromising the capacity of the institutions and of the Council to reach an agreement on the dossier and, broadly speaking, as for the legal tools at the disposal of the EU to foster its energy policy and autonomy. In addition, should the opinion be released, third parties may attempt to influence or exert pressure on the policy choices to be made by the institutions in the decision making-process in question. Thus, disclosure of the requested document would undermine the decision-making process.

In the view of the foregoing, the General Secretariat is unable to grant you full access to document 11668/11 RESTREINT UE/EU RESTRICTED, since such disclosure would prejudice the protection of international relations under Article 4(1)(a), third indent of Regulation 1049/2001, the protection of legal advice under Article 4(2), second indent of the said Regulation and the protection of the decision-making under Article 4(3) first subparagraph of the Regulation.

The General Secretariat of the Council has also examined whether there exists an overriding public interest in disclosure which would prevail over the protection of the decision-making and legal advice. The General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case which also involves issues of international relations, prevail over the protection of those interests so as to justify full disclosure of the document.

However, after careful reassessment, the General Secretariat of the Council has decided that, beyond paragraphs 1 to 10 that are already public (see document 11668/11 EXT 2) and in accordance with Article 4(6) of Regulation (EC) No 1049/2001, you may have further access to paragraphs 12, 15 and 16. You will find them in document **11668/11 EXT 3**.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application)³.

Yours sincerely,

Fernando FLORINDO

Enclosures : 19

³ 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 9 December 2021 - 16:14]

From: **DELETED**

Sent: Thursday, December 9, 2021 4:14 PM

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

Subject: Re: Ref. 21/1606-mj/vk

I want to file a confirmatory application regarding document 10092 given that its discussion of the general nature of the relationship between the European Union and Greenland is of general interest.
