



Council of the
European Union

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NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 43/c/02/21

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 21 October 2021 and registered on 22 October 2021 (Annex 1);
- the reply from the General Secretariat of the Council dated 7 December 2021 (Annex 2);
- the confirmatory application dated 11 December 2021 and registered on 13 December 2021 (Annex 3).

[E-mail message sent to access@consilium.europa.eu on 21 October 2021 - 19:52 using the electronic form available in the Register application]

From: DELETED

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

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

Family name: DELETED

First name: DELETED

E-mail: DELETED

Requested document(s)

WK 11969, 11766, 11724, 11723, 11211, 11150, 11076, 10796, 10487, 10210, 9486, 9487, 9288 of 2021



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, 7 December 2021

DELETED

Email: **DELETED**

Ref. 21/1778-em/vl/mj/aa-nb

Request made on: 21.10.2021
Registered on: 22.10.2021
Deadline extension: 16.11.2021

Dear **DELETED**,

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

Please find attached documents **WK 11076/2021** and **WK 11150/2021** as requested.

Please find attached a partially accessible version of document **WK 11211/2021**.² However, I regret to inform you that full access cannot be given for the reasons set out below.

Document **WK 11211/2021** is a Working Document of 23 September 2021 from the General Secretariat of the Council to the Working Party on Transport – Intermodal Questions and Networks. It concerns the preparation of the meeting of the Regional Steering Committee of the EU-Western Balkans Transport Community which was held in Pržno (Montenegro) on 21 October 2021.

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.

Document **WK 11211/2021** contains the draft agenda of the abovementioned meeting as well as a number of attachments.

Attachment 1, which contains the annual work program for 2022 of the Transport Community, is still a draft and the final version of this annual work program is scheduled to be adopted at the meeting of the Regional Steering Committee on 16 December 2021. Access to this part of the document has to be denied at this stage as its disclosure would seriously undermine the institution's decision-making process.³

Please note that there is an **updated version** of Attachment 2 which contains an *Information Note on the Five-year rolling work plan for the development of the indicative TEN-T network in the Western Balkans*. Please find it attached herewith.

For your information, Attachment 3 : "*Discussion on Transport Community Permanent Secretariat's One year progress report on implementation of TCT Action Plans on Road, Road Safety, Rail, and Transport Facilitation*", which was not yet available when document **WK 11211/2021** was issued is now available via the following [link](#).

Attachments 5A (which contains a proposal for the main elements of proposed changes to Staff Rules), 5B (which contains a proposal for the main elements of draft Rules on secondment and locally contracted person as well as education allowance) and 5C (which contains a proposal for amendments of Financial Rules) are still under discussion and no decision has yet been taken on these proposals. Access to these parts of the document has to be refused at this stage as their disclosure would seriously undermine the institution's decision-making process.⁴

Annex 4 of Attachment 6 (which contains a questionnaire concerning the establishing information system for the Western Balkans Road Safety Observatory) cannot be disclosed since its disclosure would undermine the protection of intellectual property pursuant to Article 4(2) first indent of Regulation (EC) n° 1049/2001.

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 the abovementioned exceptions.

Moreover, I regret to inform you that access to documents **WK 11969/2021**, **10487/2021**, **10210/2021**, **9487/2021** and **9486/2021** cannot be given for the reasons set out below.

Documents **WK 11969/2021** and **10487/2021** contain two notes from the Commission services respectively dated 8 October 2021 and 3 September 2021 concerning information on the agreement on the participation of Faroe Islands in Union programmes and the Protocol on Horizon Europe association.

³ Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

⁴ Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

- The former document contains information on the state of play of the negotiations with the Faroe Islands on the agreement in question. Moreover, it contains the text of the agreement, the text of a Protocol on the association of the Faroe Islands to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027), the rules governing the financial contribution of the Faroe Islands to the Horizon Europe Programme (2021-2027) and a list of the equivalent programmes, projects, actions, activities or parts thereof of the Faroe Islands.
- The second document focuses on the value of the adjustment coefficient applicable to the financial contribution to Horizon Europe in the abovementioned agreement.

The negotiations with the Faroe Islands are still in progress. Release of the information contained in these two documents would have a negative impact on the relations of the European Union with the Faroe Islands. Should the Union's internal views and negotiation strategy be made public while negotiations are still ongoing, the position of the Union in such international negotiations would be seriously weakened. Disclosure of these two documents would therefore undermine the protection of the public interest as regards international relations. Therefore, the General Secretariat of the Council has to refuse access to these documents.⁵

Document **WK 10210/2021** contains copy of a Letter by the competent Directorate of the Commission (DG MARE) to Norway concerning ongoing negotiations on fisheries of Svalbard cod. It also contains information concerning EU negotiation strategies on the ongoing negotiations in the framework of the EU-Norway Bilateral Fisheries Agreement.

Disclosure of this document would seriously undermine the ongoing negotiation process. It would weaken the EU position, as well as the EU relations with Norway, taking into account that positions expressed were drafted under the legitimate expectation that they would not be made public, and an atmosphere of mutual trust between the negotiating parties and a frank exchange of views is necessary for a successful outcome of these negotiations.⁶

Having examined the context in which the document was drafted and the current state of play on this matter, on balance, the General Secretariat could not identify any evidence suggesting an overriding public interest in disclosure of the document in question.

Disclosure 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 for this reason as well.⁷

Documents **WK 9486/2021 (REV 4)** and **WK 9487/2021 (REV 1)** are working documents drawn up by the European External Action Service (EEAS) for the Working Party on Eastern Europe and Central Asia focusing on the EU's relations with Ukraine.

⁵ Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

⁶ Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

⁷ Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

- The former contains a Non-Paper on a comprehensive review of the achievement of the EU-Ukraine Association Agreement's objectives
- The latter contains recommendations stemming from the abovementioned review.

Having due regard to the outcome of our consultations with the directorate responsible for this policy matter, the General Secretariat is of the opinion that the release of these two documents cannot be granted, since the sensitive information contained therein could be used by hostile entities to cause prejudice to the EU's international relations. Consequently, disclosure cannot be authorized.⁸

We have also looked into the possibility of releasing parts of documents **WK 11969/2021, 10487/2021, 10210/2021, 9487/2021 and 9486/2021**.⁹ However, as the exceptions to the right of access applies to their entire content, the General Secretariat of the Council is unable to accede to your request.

As regards the remaining documents requested (**WK 9288/2021, 10796/2021, 11723/2021 and 11724/2021**), consultations with the competent services are still ongoing and you will receive a complementary reply as soon as they are completed.

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.¹⁰

Yours sincerely,

Fernando FLORINDO

Enclosures: 4

⁸ Article 4(1)(a), third indent of Regulation (EC) No 1049/2001.

⁹ Article 7(2) of Regulation (EC) No 1049/2001.

¹⁰ 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 11 December 2021 - 00:45]

I want to file a confirmatory application in relation to the Ukraine documents. Knowing the actual achievements with the Association Agreement should help the Ukrainian people in holding their elected leaders accountable. The same of course is true in relation to European leaders.
