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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Summary of procedures applicable for the handling of initial and confirmatory applications for public access to documents of the Council and the European Council and for approval of replies to Ombudsman inquiries relating to such applications

1. In response to requests from delegations, this note provides an overview of (1) the practical modalities for the handling of initial requests for access to documents of the Council and of the European Council and (2) of the procedures and practices applicable for the approval of replies to confirmatory requests and to Ombudsman inquiries relating to such applications.
2. As regards Ombudsman inquiries concerning a complaint against a decision taken by the Council or the European Council to reject (fully or partially) a confirmatory request for public access to their documents, Delegations' attention is drawn to the intention of the GSC to return for practical reasons to the system in place before 2012. The reply to the Ombudsman shall therefore again be approved by the Council or the European Council as applicable. This intention is already taken into account in the overview set out at annex.
3. The present note is sent to delegations for their information.

OVERVIEW OF THE PROCEDURES APPLICABLE FOR THE HANDLING OF INITIAL REQUESTS
FOR PUBLIC ACCESS TO COUNCIL AND EUROPEAN COUNCIL DOCUMENTS AND
FOR THE APPROVAL OF REPLIES TO CONFIRMATORY APPLICATIONS AND
TO OMBUDSMAN INQUIRIES RELATING TO SUCH APPLICATIONS

Initial applications

1. Initial applications are handled by the General Secretariat of the Council (GSC) in accordance with Article 7 of Annex II to the Council's Rules of Procedure. This means that the General Secretariat sends a letter to the applicant, containing the reply to their initial application. The Access to Documents Team carries out any necessary consultations – in particular of the GSC policy department responsible for the requested document(s) – before sending its reply to the applicant.
2. Delegations must however be consulted, individually or collectively¹, at the stage of an initial application, whenever the requested document is a third party document originating from one or more Member States, pursuant to Art. 4(4) and (5) of Regulation 1049/2001.
3. In addition, (one or more) delegations may be consulted in cases, where the requested document is not a third party document, but has been drawn up by a delegation (acting as a member of the Council) as a contribution to the Council's work², whenever such consultation is deemed useful for the assessment of the document concerned under Regulation No 1049/2001. This consultation is usually done by email, either by the Transparency Team or by the service that had circulated the document.

¹ See doc. 6120/2/16 REV 2 for an optional procedure for collective consultation of Member States in the margin of a meeting of the Working Party on Information.

² For the distinction between a third party document originating from a Member State and a Council document drawn up by a delegation acting as a member of the Council, please refer to docs. 5108/02 and 6203/02, as approved by Coreper at its meeting of 6 and 8 March 2002 (cf. doc. 6898/02, item 22).

4. This practice is equally applied to documents held by the European Council. It is recalled, in this regard, that pursuant to Art. 10(2) of the European Council's Rules of Procedure, the provisions of Annex II to the Council's Rules of Procedure are applicable *mutatis mutandis* to the European Council.

Confirmatory applications

5. A confirmatory application is an administrative appeal, which can be lodged by the applicant in cases where the General Secretariat has refused (partially or fully) access to one or more documents covered by the initial request.
6. Pursuant to Article 8 of Annex II to the Council's Rules of Procedure, confirmatory applications are decided upon by the Council. This means that the normal three-stage procedure for the preparation and approval of a Council decision – Working party → Coreper → Council – applies.
7. Confirmatory applications addressed to the European Council are decided upon by that institution, by virtue of Article 10 (2) of its Rules of Procedure and Article 8 of Annex II to the Council's Rules of Procedure.
8. The decision of the (European) Council is then notified to the applicant by the General Secretariat.

Procedure in the Information Working Party

9. Upon reception of a confirmatory application, the General Secretariat issues a first document, containing the initial application, the General Secretariat's reply to the initial application as well as the confirmatory application.³

³ Personal data is deleted from documents concerning confirmatory applications, unless the applicant has explicitly given his or her consent to the release of such data.

10. The Transparency Team then carries out fresh consultations with the relevant GSC services and/or others in order to re-assess the possibilities for full or partial release of the requested document(s), taking into account the applicant's arguments (as appropriate). Upon completion of these consultations, the Transparency Team prepares a note for the Information Working Party – setting out a draft reply to the confirmatory application – in close cooperation with the Council's Legal Service.
11. This note is then put on the agenda of a meeting of the Information Working Party, if the meeting calendar and the deadline for reply allow for it. Otherwise, a written consultation⁴ of the Working Party is launched.
12. Although the Information Working Party is a preparatory body of the Council, and not of the European Council, confirmatory applications addressed to the European Council are in practice submitted to the Working Party in the same way, as a matter of convenience and in order to give delegations the opportunity to properly discuss the draft replies to the applications.

Approval by the Council

13. Once approved by the Information Working Party, the proposed reply of the Council is issued in the form of a “I/A” item note and put on the agenda of Coreper II and Council for final approval. If it is not possible to submit the draft reply for approval by Coreper/Council within the deadline provided for in Article 8 of Regulation 1049/2001, the draft reply is submitted to delegations for approval by a formal written procedure.

⁴ It is important to distinguish this written *consultation* from a written *procedure*. The former replaces discussion in the Working Party, while the latter replaces approval in Coreper and Council. In exceptional cases – although the General Secretariat will always do its utmost to avoid such situations – members of the Information Working Party might therefore receive the same question twice, first as written *consultation* and shortly thereafter as a formal written *procedure*.

Approval by the European Council

14. As mentioned above, the provisions of Annex II to the Council's Rules of Procedure are applicable *mutatis mutandis* to the European Council (pursuant to Art. 10 (2) of the European Council's Rules of Procedure), which means that confirmatory applications addressed to the European Council are decided upon by that institution (*mutatis mutandis* application of Art. 8 of Annex II to the Council's Rules of Procedure).
15. To that end, the General Secretariat prepares a note to be adopted by the European Council by written procedure on the proposal of its President (Art. 7 of its Rules of Procedure).⁵

Ombudsman complaints

16. An applicant can lodge a complaint with the Ombudsman against a negative decision taken by an institution following a confirmatory application for public access to documents. The Ombudsman then examines the complaint and will in most cases ask the institution concerned for authorisation to inspect the requested documents.
17. Institutions are required to cooperate with the Ombudsman and thus to authorise such inspections, but the Ombudsman in turn cannot pass on to the complainant any information, that has been transmitted to the Ombudsman by the institution concerned on a confidential basis.
18. The Information Working Party is informed of any complaint concerning a Council decision to refuse access to one or more of its documents at the confirmatory stage.

⁵ The only alternative to a written procedure would be to submit a draft reply to a confirmatory application to an actual meeting of Heads of State and Government, something that does not seem to be reasonably feasible.

Inspections

19. Where an inspection is requested, the reply letter to the Ombudsman, containing the authorisation of and setting out the practical modalities for the inspection is as a rule approved by Coreper (Article 19 (7) (k) of the Council's Rules of Procedure).
20. In cases where the complaint concerns a refusal to grant access to documents of the European Council, the reply letter authorising the inspection has to be approved by written procedure by the European Council.

Reply to the Ombudsman

21. A reassessment of the requested document(s) is carried out in the light of the complainant's arguments and the Ombudsman's observations.
 22. A proposal for the institution's reply to the Ombudsman is submitted to the Information Working Party following the same procedure as the one applicable for approval of replies to confirmatory requests.
 23. The final approval of the reply to the Ombudsman by the Council or the European Council also takes place according to the procedure applicable for the approval of letters of reply to confirmatory requests submitted to any of these institutions.
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