



Council of the
European Union

Brussels, 16 May 2023
(OR. en)

9497/23

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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Public access to documents
- Confirmatory application No 14/c/01/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 6 March 2023 and registered on the same day (Annex 1).
- the reply from the General Secretariat of the Council dated 24 April 2023 (Annex 2).
- the confirmatory application dated 14 May 2023 and registered on 15 May 2023 (Annex 3).

From: **DELETED**

Sent: Monday, March 6, 2023 3:25 PM

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

Subject: access to documents request - List WK documents (Feb16th until March 06th 2023) and text of previously listed WK documents

Dear Council of the European Union,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001 and interpreted by the CJEU, I am requesting

- a LIST of the WK documents linked to EU legislative procedures and shared inside the Council Working Parties between February 16th and March 06th.
- the TEXT of the WK documents listed below.

Thanks in advance.

Yours Faithfully

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LIST OF WK DOCUMENTS

- 529/2023 Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' ... - 4-Column table 2016/0132 (COD)
- 1513/2023 Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of - Compilation of comments of delegations 2016/0132 (COD)
- 17152/2022 Proposal for a Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) 2016/0222 (COD)
- 17161/2022 Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, (...) 2016/0223 (COD)
- 16880/2022 Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU - Compilation of comments of delegations 2016/0224 (COD)
- 17153/2022 REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a Union Resettlement and Humanitarian Admission Framework 2016/0225 (COD)

- 1505/2023 Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] - Compilation of comments of delegations 2020/0279 (COD)
- 16881/2022 Proposal for a Directive of the European Parliament and of the Council on information exchange between law enforcement authorities of Member States, repealing Council Framework Decision 2006/960/JHA 2021/0411 (COD)
- 17001/2022 EU Drugs Agency Regulation: initial examination of the European Parliament's amendments 2022/0009 (COD)
- 17483 /2022 Data Act - Presentation of the 3rd compromise text - comments by the Commission 2022/0047 (COD)
- 263/2023 Data Act- Presidency option paper 2022/0047 (COD)
- 15847/2022 Position paper of Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden for the information of the members of the European Parliament on the proposal for a Regulation on information security in the institutions, bodies, offices and agencies of the Union 2022/0084 (COD)
- 9516/2022 Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 767/2008, (EC) No 810/2009 and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No 1683/95, (EC) No 333/2002, (EC) No 693/2003 and (EC) No 694/2003 and Convention implementing the Schengen Agreement, as regards the digitalisation of the visa procedure- Consolidated version of the amended articles 2022/0132 (COD)
- 17072/2022 Technical workshop on the Digitalisation of Visa Procedure Technical Workshop (online), 7 November 2022- Report 2022/0132 (COD)
- 9516/2022 Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 767/2008, (EC) No 810/2009 and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No 1683/95, (EC) No 333/2002, (EC) No 693/2003 and (EC) No 694/2003 and Convention implementing the Schengen Agreement, as regards the digitalisation of the visa procedure- Consolidated version of the amended articles 2022/0132 (COD)
- 17072/2022 Technical workshop on the Digitalisation of Visa Procedure Technical Workshop (online), 7 November 2022- Report 2022/0132 (COD)
- 768/2023 European Visa Application Platform (EU VAP)- The inter-linkages between the common EU platform and existing national visa systems 2022/0132 (COD)
- 16135/2022 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the status of third-country nationals who are long-term residents (recast)- Presidency discussion paper with regard to beneficiaries of international protection 2022/0134 (COD)
- 16370/2022 Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation - Written comments 2022/0167 (COD)
- 17753/2022 Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation - Written comments 2022/0167 (COD)

- 16241/2022 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on asset recovery and confiscation - redraft 2022/0167 (COD)
- 16575/2022 Directive of the European Parliament and of the Council on liability for defective products- Comments by AT, DK, FI, FR, IE, IT, PL, PT and SI delegations on first two Chapters 2022/0302 (COD)
- 15189/2022 Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive)- Table of correspondence 2022/0303 (COD)
- 16564/2022 Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive)- Comments by DE delegation 2022/0303 (COD)
- 16564/2022 Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive)- Comments by AT, DK, FI, FR, IT, NL, PT and SI delegations. 2022/0303 (COD)
- 739/2023 Proposal for a Directive amending Directive 2011/36/EU – Commission presentation 2022/0426 (COD)
- 1495/2023 Trafficking in Human beings Directive – written comments 2022/0426 (COD)



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, 24 April 2023

DELETED

Email: **DELETED**

Ref. 23/0669 - ADD 2-mj-ws-rh-mw/el

Request made on: 06.03.2023

Dear **DELETED**,

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

Further to our letters of 27 March and 20 April 2023, please find attached documents **WK 15847/22**, **WK 15847/22 COR 1** and **WK 17001/22 ADD 2**.

Please also find attached a partially accessible version of document **WK 17072/22**.² However, I regret to inform you that full access cannot be given for the reasons set out below.

Document **WK 17072/22** of 6 December 2022 is a meeting document from the General Secretariat of the Council to the Visa Working Party on the *Technical workshop on the Digitalisation of Visa Procedure Technical Workshop (online), 7 November 2022 – Report*.

The document contains, among other things, sensitive technical information about the security authentication mechanisms of the VISA Application Platform. Releasing such information into the public domain would constitute a public security risk due to the sensitivity of the information therein which could aid criminal organisations in obtaining a detailed reconnaissance profile of the security

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.

mechanisms and protective methods. The disclosure of such information could facilitate malicious actions to disrupt or tamper with the confidentiality and integrity of the future system and the personal data that this will manage.

Therefore, having consulted with the originating source of the text, the General Secretariat of the Council is of the opinion that the full disclosure would undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse full access to this document.³ You may, however, have a large partial access to it.

Furthermore, I regret to inform you that access to document **WK 768/23** cannot be given for the reasons set out below.

Document **WK 768/23** of 19 January 2023 is a meeting document from the General Secretariat of the Council to the Visa Working Party containing a presentation "*European Visa Application Platform (EU VAP) - The inter-linkages between the common EU platform and existing national visa systems*" made by eu-Lisa at the meeting on 19-20 January 2023.

It contains sensitive technical information about the high level architecture and business flows of the VISA Application Platform. Disclosing such information would constitute a public security risk due to the sensitivity of the information therein which would aid criminal organisations in obtaining detailed reconnaissance profile of the data structures and internal operations. The disclosure of such information could facilitate malicious actions to disrupt or tamper with the confidentiality and integrity of the future system and the personal data that this will manage.

Therefore, having consulted with the originating source of the document, the General Secretariat of the Council is of the opinion that the release of this document into the public domain would undermine the protection of the public interest as regards public security, in accordance with Article 4(1)(a) first indent of the Regulation (EC) No 1049/2001.

We have also looked into the possibility of releasing parts of this document.⁴ However, as the exception to the right of access applies to its entire content, the General Secretariat is unable to give partial access.

Moreover, I regret to inform you that access to documents **WK 1505/23** and **WK 1513/23** cannot be given for the reasons set out below.

Document **WK 1505/23** of 3 February 2023 is a working document from the General Secretariat of the Council to the Asylum Working Party on the *Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] - Compilation of comments of delegations.*

Document **WK 1513/23** of 9 February 2023 is a working document from the General Secretariat of the Council to JHA Counsellors (Asylum) on the *Amended proposal for a REGULATION OF THE*

³ Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

⁴ Article 4(6) of Regulation (EC) No 1049/2001.

EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/ XXX [Resettlement Regulation], for identifying an illegally staying third- country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818 and contains a compilation of comments of delegations.

Both files are currently subject of intensive negotiations, even if they are in different stages of the negotiation process and are intrinsically linked to other files on which intensive inter-institutional negotiations are ongoing. Both requested documents explore possible solutions for difficulties that still need to be addressed. Releasing recent positions of EU Member States on issues that will later be subject of negotiations with the European Parliament or on the actual amendments made already by the European Parliament into the public domain at this stage would seriously undermine the negotiation strategy (to be) taken by the Presidency, including future Presidencies and might affect the negotiations on other files.

Having consulted internally, the General Secretariat of the Council is of the opinion that disclosing their content at this stage would seriously undermine the decision making-process of the Council. As a consequence, the General Secretariat has to refuse access to both documents at this stage.⁵

Having examined the context in which both documents were drafted and the current state of play on these matters, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in their disclosure.

We have also looked into the possibility of releasing parts of the documents.⁶ However, negotiations have not been concluded on any part of the above-mentioned Regulations and no part of the documents can be released into the public domain. The General Secretariat is unable to give partial access at this stage.

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.

Yours sincerely,

Fernando FLORINDO

Enclosures: 4

⁵ Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

⁶ Article 4(6) of Regulation (EC) No 1049/2001.

From: **DELETED**

Sent: Sunday, May 14, 2023 11:30 PM

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

Subject: Internal review of access to documents request - List WK documents (Feb16th until March 06th 2023) and text of previously listed WK documents

SUBJECT: CONFIRMATORY APPLICATION for having access to documents WK 1505/23 (ex-Dublin Regulation) and WK 1513/23 (Eurodac access for law enforcement authorities) (Your Letter on April 24th , 2023- Ref. 23/0669 - ADD 2-mj-ws-rh-mw/el)

To the attention of the Council of the European Union

(General Secretariat – DG COMM - Directorate Information and Outreach Information Services Unit / Transparency Directorate-General Communication and Information)

Referring to your letter on April 24th,2023, first of all, I thank you for giving access to documents WK 15847/22, WK 15847/22 COR 1 and WK 17001/22 ADD 2.

I also understand why you sent me only a partially redacted version of document WK 17072/22 of 6 December 2022 (Report on the Technical workshop on the Digitalisation of Visa Procedure Technical Workshop held online on 7 November 2022). Releasing into the public domain information about the security authentication mechanisms of the VISA Application Platform may, indeed, aid criminal organisations and facilitate malicious actions to disrupt or tamper with the confidentiality and integrity of the future system and the personal data that this will manage.

The same reasoning, may justify your refusal of giving access to document WK 768/23 of 19 January 2023 containing a presentation by eu-LISA of the “European Visa Application Platform (EU VAP).

That having been said, I don’t consider justified your refusal of giving access to documents WK 1505/23 and WK 1513/23. Therefore I hereby, submit a CONFIRMATORY APPLICATION for having access to these two WK documents containing a compilation of the Member States delegations on the following legislative procedures :

- 2020/0279(COD) Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management (NB so called “Dublin Regulation”) (Document WK 1505/23 of 3 February 2023)

- 2016/0132(COD) Revision of EURODAC Regulation for identifying an illegally staying third- country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement (Document WK 1513/23 of 9 February 2023)

According to your letter “Both files are currently subject of intensive negotiations, even if they are in different stages of the negotiation process and are intrinsically linked to other files on which intensive inter-institutional negotiations are ongoing. Both requested documents explore possible solutions for difficulties that still need to be addressed. Releasing recent positions of EU Member States on issues that will later be subject of negotiations with the European Parliament or on the actual amendments made already by the European Parliament into the public domain at this stage would seriously undermine the negotiation strategy (to be) taken by the Presidency, including future Presidencies and might affect the negotiations on other files.”

Moreover you state that “Having examined the context in which both documents were drafted and the current state of play on these matters, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in their disclosure.”

On your main argument according to which releasing the documents “would seriously undermine the negotiation strategy (to be) taken by the Presidency, including future Presidencies and might affect the negotiations on other files.” I respectfully raise the following counter-arguments:

1. Negotiating EU legislation is since the Lisbon Treaty a joint responsibility of the European Parliament and of the Council of the European Union (art. 14 and 16 of the TEU). The proof of this joint responsibility is that in case of illegality of an EU legislative measure the CJEU both the EP and the Council will be considered responsible (not the Commission even if it has the right of initiative and plays a role along the legislative procedure). No matter of the internal organization of the EP and of the Council, the EU legislative ordinary procedure is framed in detail by the art. 294 of the TFEU which clearly requires the Council and the Commission to explain to the EP and to the Citizens their position in the subsequent phases of the procedure. This same obligation of transparency is, in my opinion, required also when the interinstitutional negotiations take place in the first parliamentary phase (first reading agreement) or in the occasion of the adoption of the Council position (early second reading). Being “jointly responsible “ require the co-legislator the highest possible level of “mutual sincere cooperation” foreseen by art.13 TUE.

In this perspective, in my opinion, negotiating an EU legislative text is not a Chess Game where both players may be interested in hiding their respective strategies. Quite the opposite, they should share from the very beginning of the negotiation, in good faith, all the possible information which may make easier to understand the possible impact of the envisaged legislation as well as favor its adoption.

Looking from an EU citizen point of view the right to legislative transparency cover all the legislative procedure, no matter of the co-legislator at stake because both of them are directly (EP) or indirectly (Council) accountable towards the EU Citizens (art.10 TEU) .

2. Knowing the position of the Member States, as reflected in the WK documents at stake which is like the one examined in case T-163/21, is not only essential to better understand the content of the arguments raised by each national delegation but also to understand if the same arguments could find a qualified majority inside the Council or can be shared also by the European Parliament by so making easier the success of the incoming interinstitutional negotiation (Trilogue). Under this perspective more transparency will not only strengthen the principle of participative democracy foreseen by the Treaties and as confirmed by the CJEU (cases T-540/15 and T-163/21) but also the principle of sincere cooperation between the co-legislators.

3. Member States delegates should be perfectly aware that what they say or write when acting as legislators is deemed to become public as foreseen by art.15.2 TFEU, art. 12 of Regulation 1049/01 and the CJEU jurisprudence on legislative transparency.

4. Last but not least, I am rather surprised by the fact that the Council does not see “an overriding public interest” in the disclosure of these two documents. It seems to me self-evident that such interest exists for two legislative proposals at stake under two different perspective : 1) because they play a pivotal role in the European Pact on Migration and Asylum and 2) because the Member States representatives have a closer view of the impact on the ground of the new envisaged legislation.

Thanks in advance for your understanding

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