Transparency and Access to documents of the Council of the European Union

Brussels, 8 July 2016
Programme

❖ Part I: Transparency
❖ Part II: Access to documents: Key players
❖ Part III: Access to documents:
  • Main elements of Regulation 1049/2001
  • Implementing Regulation 1049/2001
❖ Part IV: How does transparency affect your daily work
❖ Part V: Records Management and Central Archives
Part I: Transparency

- What is Transparency?
- Transparency in the Treaties
- Transparency in the Council Rules of Procedure
- Council Open Sessions and Voting Results
What is Transparency?

Transparency means openness and accountability of public administrations.

Transparency increases public interest in policies and trust in institutions. Interest and trust are crucial elements to sustain the European project.

At the European level, transparency means:

- openness of deliberations on legislative acts,
- public's right of access to documents.
Transparency in the Treaties

**THE AIM**
(article 10(3) TEU)

Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

**A FUNDAMENTAL RIGHT**
(article 42 EU CHARTER)

Any citizen of the Union has a right of access to documents.

**HOW TO ACHIEVE IT**
(article 15(3) TFEU)

When deliberating and voting on legislative acts the Council meets in public. The public has a right of access to documents of the Union's Institutions.
Openness of legislative deliberations (art. 7 CRP)

- The Council meets in public when deliberating or voting on legislative acts.
- Voting results, explanation of votes and statements made in relation to legislative acts are public.
Public deliberations and debates (art. 8 CRP)

- Council's first deliberation on important non-legislative proposals is public [art 8(1)].

- The Council holds public debates on important issues affecting the EU and its citizens [art 8(2)].

- Debates on - GAC's 18 month programme, priorities of the other Council's configurations, Commission's five-year programme, annual work programme and annual policy strategy - are public [art 8(3)].
Public deliberations and debates (art. 8 CRP)

All documents submitted to the Council under an item marked as:

- Legislative deliberation
- public deliberations
- public debates

are public!
Transparency in the Council’s Rules of Procedure

- **Votes on non-legislative deliberations (art. 9 CRP)**
  - When adopting the important non-legislative proposals referred to in art. 8(1), the voting results, explanation of votes and statements are public.
  - The Council may also decide to make public the voting results of any other non-legislative act. In the case of Title V TEU, this decision is unanimous.
Council’s website

- Full meeting calendar
- Dedicated page for each Council meeting:
  - Preview of agenda and topics of discussion
  - List of participants
  - Summary of main results
  - Detailed outcome of Council meeting
- Consult documents related to Council meeting: provisional agenda, list of A items, press releases, etc.
Open Sessions

- Council’ Webcast
  - Watch public sessions **LIVE**
  - See votes on legislative acts
  - Consult documents submitted to Council for public sessions
  - Consult background notes and press releases
Voting Results

**Fiche de vote**

**General Secretariat of the Council**

<table>
<thead>
<tr>
<th>Institution:</th>
<th>Council of the European Union</th>
</tr>
</thead>
<tbody>
<tr>
<td>Session:</td>
<td>3328</td>
</tr>
<tr>
<td>Configuration:</td>
<td>Agriculture and Fisheries</td>
</tr>
<tr>
<td>Item:</td>
<td>2013/0253 (COD) (Document: B8/14)</td>
</tr>
<tr>
<td>Voting Rule:</td>
<td><strong>qualified majority</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vote</th>
<th>Members</th>
<th>Votes Cast</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>28</td>
<td>352</td>
</tr>
<tr>
<td>No</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Abstain</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Not participating</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>28</td>
<td>352</td>
</tr>
</tbody>
</table>

**Sitting date:** 14/07/2014

**Final result**

<table>
<thead>
<tr>
<th>Member State</th>
<th>Weighting</th>
<th>Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>BELGIQUE/BELGIE</td>
<td>12</td>
<td>🎁</td>
</tr>
<tr>
<td>БЪЛГАРИЯ</td>
<td>10</td>
<td>🎁</td>
</tr>
<tr>
<td>ČESKÁ REPUBLIKA</td>
<td>12</td>
<td>🎁</td>
</tr>
<tr>
<td>DANMARK</td>
<td>7</td>
<td>🎁</td>
</tr>
<tr>
<td>DEUTSCHLAND</td>
<td>29</td>
<td>🎁</td>
</tr>
<tr>
<td>ESTI</td>
<td>4</td>
<td>🎁</td>
</tr>
<tr>
<td>ÉIRE/IRELAND</td>
<td>7</td>
<td>🎁</td>
</tr>
<tr>
<td>ELADA</td>
<td>12</td>
<td>🎁</td>
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<tr>
<td>ESPAÑA</td>
<td>27</td>
<td>🎁</td>
</tr>
<tr>
<td>FRANCE</td>
<td>20</td>
<td>🎁</td>
</tr>
<tr>
<td>HRVATSKA</td>
<td>7</td>
<td>🎁</td>
</tr>
<tr>
<td>ITALIA</td>
<td>29</td>
<td>🎁</td>
</tr>
<tr>
<td>КУПРОС</td>
<td>4</td>
<td>🎁</td>
</tr>
<tr>
<td>LATVIA</td>
<td>4</td>
<td>🎁</td>
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<tr>
<td>LITWA</td>
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<td>🎁</td>
</tr>
<tr>
<td>LUXEMBOURG</td>
<td>4</td>
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</tr>
<tr>
<td>MagyarORSZÁG</td>
<td>12</td>
<td>🎁</td>
</tr>
<tr>
<td>MALTA</td>
<td>3</td>
<td>🎁</td>
</tr>
<tr>
<td>NEDERLAND</td>
<td>13</td>
<td>🎁</td>
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<tr>
<td>ÖSTERREICH</td>
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<tr>
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<tr>
<td>PORTUGAL</td>
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<td>🎁</td>
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<td>ROMÁNIA</td>
<td>14</td>
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<td>SLOVENIJA</td>
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<tr>
<td>SLOVENSKO</td>
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<td>SUOMI/FINLAND</td>
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<tr>
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<td>🎁</td>
</tr>
<tr>
<td>UNITED KINGDOM</td>
<td>29</td>
<td>🎁</td>
</tr>
</tbody>
</table>

*qualified majority is reached if at least 260 votes in favour are cast by at least 15 of the 28 participating Council members

A *fiche de vote* is prepared and displayed:

- For all the steps of the ordinary legislative procedure:
  - adoption of a legislative act (approval of EP position at first reading),
  - adoption of the position of the Council at first reading,
  - approval of EP amendments at second reading,
  - non-approval of EP amendments at second reading,
  - approval of Conciliation Committee Joint Text,
  - non-approval of Conciliation Committee Joint Text,

- For steps of special legislative procedures:
  - adoption of a legislative act
  - adoption of the position of the Council (budgetary acts).
A *fiche de vote* is NOT prepared:

- For indicative voting intentions at intermediate stages of legislative deliberations, namely, for:
  - political agreements,
  - general approaches,
  - progress reports,
  - information on the state of play, etc.

*However, the voting intentions can still be read in public by the Presidency*
Open sessions during the Luxembourg Presidency (JULY-DEC 2015)

Duration of open sessions per Council configuration

<table>
<thead>
<tr>
<th>Council configuration</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>TTE</td>
<td>11:06:00</td>
</tr>
<tr>
<td>EPSCO</td>
<td>09:51:00</td>
</tr>
<tr>
<td>EYCS</td>
<td>07:02:00</td>
</tr>
<tr>
<td>ENVI</td>
<td>05:36:00</td>
</tr>
<tr>
<td>AGRIFISH</td>
<td>04:49:30</td>
</tr>
<tr>
<td>JHA</td>
<td>04:43:00</td>
</tr>
<tr>
<td>Ecofin</td>
<td>04:15:00</td>
</tr>
<tr>
<td>COMPET</td>
<td>00:35:00</td>
</tr>
<tr>
<td>GAC</td>
<td>00:31:00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>48:28:30</strong></td>
</tr>
</tbody>
</table>

COMPET; 00:35:00

GAC; 00:31:00

Ecofin; 04:15:00

JHA; 04:43:00

AGRIFISH; 04:49:30

ENVI; 05:36:00

TTE; 11:06:00

EPSCO; 09:51:00

EYCS; 07:02:00

8 July 2016
Open sessions during the Luxembourg Presidency (JULY-DEC 2015)

Online viewers of Council open sessions

<table>
<thead>
<tr>
<th>Council configuration</th>
<th>Online viewers</th>
<th>Live</th>
<th>Recorded</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGRIFISH</td>
<td>2880</td>
<td>1630</td>
<td>1250</td>
</tr>
<tr>
<td>ENVI</td>
<td>2670</td>
<td>1157</td>
<td>1513</td>
</tr>
<tr>
<td>TTE</td>
<td>2150</td>
<td>1000</td>
<td>1150</td>
</tr>
<tr>
<td>JHA</td>
<td>1761</td>
<td>592</td>
<td>1169</td>
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<tr>
<td>ECOFIN</td>
<td>1549</td>
<td>752</td>
<td>797</td>
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<tr>
<td>EPSCO</td>
<td>1387</td>
<td>856</td>
<td>531</td>
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<tr>
<td>EYCS</td>
<td>808</td>
<td>401</td>
<td>407</td>
</tr>
<tr>
<td>GAC</td>
<td>444</td>
<td>112</td>
<td>332</td>
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<tr>
<td>COMPET</td>
<td>288</td>
<td>64</td>
<td>224</td>
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</table>

<table>
<thead>
<tr>
<th>Council configuration</th>
<th>Online viewers</th>
<th>Live</th>
<th>Recorded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>13937</td>
<td>6564</td>
<td>7373</td>
</tr>
</tbody>
</table>

- AGRIFISH: 22%
- ENVI: 20%
- TTE: 16%
- ECOFIN: 12%
- EPSCO: 11%
- JHA: 13%
- EYCS: 6%
### Legislative deliberations vs. Public debates

<table>
<thead>
<tr>
<th></th>
<th>Legislative deliberations</th>
<th>Public debates</th>
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</thead>
<tbody>
<tr>
<td>&quot;A&quot; Items for adoption</td>
<td>45</td>
<td></td>
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<tr>
<td>Agenda Items for discussion</td>
<td>59</td>
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<tr>
<td>Issues affecting EU citizens</td>
<td>39</td>
<td>56</td>
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<tr>
<td>Programmes</td>
<td>17</td>
<td>35%</td>
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</table>

**TOTAL: 160**
### Legislative deliberations (agenda items) per Council formation

<table>
<thead>
<tr>
<th>EPSCO</th>
<th>JHA</th>
<th>TTE</th>
<th>ECOFIN</th>
<th>AGRI</th>
<th>ENV</th>
<th>EYCS</th>
<th>COMP</th>
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</thead>
<tbody>
<tr>
<td>8</td>
<td>22</td>
<td>5</td>
<td>12</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0</td>
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</table>

### Public debates per Council formation

<table>
<thead>
<tr>
<th>EPSCO</th>
<th>JHA</th>
<th>TTE</th>
<th>ECOFIN</th>
<th>AGRI</th>
<th>ENV</th>
<th>EYCS</th>
<th>COMP</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>3</td>
</tr>
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</table>
Open sessions during the Luxembourg Presidency (July - Dec 2015)

<table>
<thead>
<tr>
<th>3441st Environment</th>
<th>16 December 2015</th>
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</thead>
<tbody>
<tr>
<td>Location of the 751 viewers watching the broadcast LIVE</td>
<td></td>
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<tr>
<td>Belgium</td>
<td>243</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>120</td>
</tr>
<tr>
<td>Germany</td>
<td>84</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>50</td>
</tr>
<tr>
<td>USA</td>
<td>25</td>
</tr>
</tbody>
</table>

Items:
- General approach
Press conferences during the Luxembourg Presidency (July - Dec 2015)

<table>
<thead>
<tr>
<th>Location of the 4 000 viewers watching the press conference LIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium 2292</td>
</tr>
<tr>
<td>Netherlands 238</td>
</tr>
<tr>
<td>USA 222</td>
</tr>
<tr>
<td>United Kingdom 196</td>
</tr>
<tr>
<td>Australia 35</td>
</tr>
<tr>
<td>Japan 33</td>
</tr>
</tbody>
</table>

Others: Canada, China, India, Malaysia, Malawi, Mexico and Russia.
For a successful public deliberation:

- Careful planning of the Agenda
- Coach your Presidency
- Technical requirements must be known in advance
- Votes must be known in advance
- Follow the Agenda!
Access to documents (art. 10 + Annex II)

- The public has a right of access to documents of the **Council** and of the **European Council**.

- **Regulation 1049/2001** establishes the general principles and limits governing the right of access to documents of the EU Institutions.

- **Annex II of the CRP** sets specific provisions for the implementation of this right by the Council.
Part II - Access to documents: Key players

- The Courts
- The European Ombudsman
- The European Data Protection Supervisor (EDPS)
- NGOs and other players
The EU institutions are required to state reasons for their individual decisions refusing access to documents.

The reasons for refusal have to be stated in a way which does not harm the interests to be protected.

Exceptions should be interpreted and applied strictly.

Principles derived from case-law

_T-105/95 WWF v. Commission_
The Courts
Case-law on access to documents

- A decision refusing access must be based on a genuine examination of the document and the particular circumstances of the case,

- If only parts of a requested document are covered by any of the exceptions, the remaining parts of the document shall be released

*(now Art. 4(6) of Regulation 1049/2001)*

Principles derived from case-law

*T-14/98 Hautala*
A decision refusing access is only valid if it is based on the exceptions provided for in the Regulation (implied by the judgment).

Principles derived from case-law

*C-64/05 P Sweden v. Commission*
“Regulation No 1049/2001 imposes, in principle, an obligation to disclose the opinions of the Council’s legal service relating to a legislative process.”

However, refusal of a specific LS opinion based on the protection of legal advice is possible if the opinion:

• is of a particularly sensitive nature,
• has a particularly wide scope going beyond the context of the legislative process in question.

Principles derived from case-law

C-39/05 P Turco and Sweden v. Council
The Courts
Case-law on access to documents

- “the principle of democratic legitimacy (...) requires those responsible for the proposals contained in the requested document to be publicly accountable for their actions, especially where that document is part of the legislative procedure.”

- Documents on legislative files with footnotes containing the positions of Member States should be released to the public upon request.

Principles derived from case-law

C-208/11 P Access Info Europe v. Council
The Ombudsman’s decisions are not legally binding, however, they have considerable political impact.

In most cases, the institutions will follow the Ombudsman’s recommendations, if found guilty of maladministration.

Complaint of Statewatch in 2000 led to the guidelines on document production in CP 200/08.
In December 2014, Giovanni Buttarelli was appointed as EDPS, after serving as Assistant Supervisor. Wojciech Wiewiórowski was appointed Assistant Supervisor at the same time.

Their mission is to make sure that the fundamental right to protection of personal data is respected by the EU institutions and bodies.
Statewatch was created in 1991. It aims to encourage informed discussion and debate in Europe particularly in the field of civil liberties, accountability and openness.

It is very keen to publish documents of the EU Institutions related to the area of transparency and access to documents.
Created in 2006, Access Info promotes the right of access to information in the EU with the aim to facilitate public participation in decision-making and to hold the EU accountable.

It supports the AsktheEu.org website which publishes the Institutions’ answers to requests for information and for access to documents.
Non Governmental Organisations

- Created in 2009, **VoteWatch** promotes transparency in decision-making process of the EU
- Provides easy access to votes and analysis of the political decisions of the European Parliament and of the Council

NGOs
votewatch.eu

www.votewatch.eu
Main elements of Regulation 1049/2001
- Institutional coverage
- Material scope
- Beneficiaries
- Transparency principles

Implementing Regulation 1049/2001
- Introducing initial requests
- Processing initial requests
- Examination of documents: The “harm test”
- Processing confirmatory requests
- Deadlines for replying
Regulation 1049/2001

Institutional coverage

- The European parliament,
- The Council
- The Commission
- Other EU Institutions, bodies or agencies apply 1049/2001 via their rules of procedure
Material scope

• All documents held by the institutions on all areas of activity of the EU

• Document means any content whatever its medium:
  - written on paper
  - stored in electronic form
  - stored as a sound, visual or audiovisual recording
Regulation 1049/2001

Beneficiaries

- Any citizen of the Union, and any natural or legal person residing or having an office in a Member State

- CRP enlarge the scope of the beneficiaries to include any natural or legal person
Transparency Principles

- Applies to all documents held by an Institution, concerning all areas of activity

- Transparency is the rule, refusal of access is the exception

- Exceptions to the right of access are foreseen, but these must be interpreted and applied strictly

- Reasons to refuse a document must be stated

- Partial access should always be considered
Review of Regulation 1049/2001

- April 2008, proposal for a recast of Regulation 1049/2001 on access to documents.
- March 2011, additional proposal to align the Regulation with the Lisbon Treaty and extend its scope of application to all European institutions, bodies, offices and agencies.
- The Council and the European Parliament are currently examining both proposals but their positions are still very far from each other.
Geographic distribution of applicants

Belgium: 25%
Germany: 13%
United Kingdom: 10%
Netherlands: 7%
France: 6%
Spain: 5%
Italy: 4%
Third countries: 4%
Not specified: 12%
Access to documents in numbers (2015)

Professional profiles of the applicants

- Academic world: 38%
- Civil society: 27%
- Legal profession: 10%
- Journalists: 4%
- Undeclared: 7%
Main fields covered by requests

- 27% - Area of freedom, security and justice
- 13% - CFSP
- 9% - Economic and Monetary Policy
- 8% - Internal market
- 8% - Environment
- 4% - Taxation
- 4% - Social policy
Exceptions used for refusing access

- 45% - Decision-making process
- 19% - International relations
- 4% - Public security
- 2% - Defense and military matters
- 1% - Protection of legal advice
- 0.2% - Personal data
- 28% - Several reasons used together
Introducing initial requests

- A request for access to documents shall be made in written form, including electronic form, in one of the EU languages
- The request does not have to be motivated
- Requests can be sent to:
  - DGF2 Transparency Service,
  - Any other service of the GSC,
  - A Member State or European Institution in possession of the documents in question
Implementing Regulation 1049/2001

❖ Introducing initial requests

Other services or members of staff of the GSC shall immediately forward to the Transparency Service at

access@consilium.europa.eu

any request for access to documents for processing
Processing initial requests

Upon reception of a request for documents, the Transparency Service:

- registers the request in its database (DTA)
- sets a deadline for replying to the request
- identifies the requested document(s)
- examines whether access can be granted
Processing initial requests

- The Transparency Service does a preliminary examination of the requested documents, taking into consideration the subject, content and the state of play of ongoing negotiations.

- If necessary, the responsible desk officer is consulted, usually by email.

- The Transparency Service will often make suggestions as regards the possibility of granting full or partial access.
Processing initial requests

- Following the examination stage and response by the desk officer, the Transparency Service sends a letter of reply to the applicant

- No working party is involved at this stage, the reply letter is the sole responsibility of the GSC
Implementing Regulation 1049/2001

❖ Replying to the applicant

Access
Between 71% and 88% of requested documents are made public

Partial access
Partial access has to be considered for all documents

Refuse access:
Always state reasons for refusal!
Article 4: Exceptions to the right of access

The release of the document **would undermine** the protection of:

- public interest, in particular regarding public security and international relations,
- privacy and the integrity of an individual,
- commercial interests,
- court proceedings and legal advice,
- inspections, investigations and audits.
The release of the document would seriously undermine the protection of:

- the decision-making process of the Council.
Implementing Regulation 1049/2001

- **Classified documents**
  
  - Full declassification by the BIC in the form of a DCL or REV version
  
  - Partial declassification: the Transparency Service prepares an EXT version and sends it to originating service
Implementing Regulation 1049/2001

- Harm Test

  - Any decision to refuse access to a document must be based on a “harm test”

  - All documents requested must be submitted to an analysis measuring the harm that disclosure would cause to one of the public or private interests to be protected
Practical example:

Request received via website (as analysed by the Transparency Service)

This electronic form has been submitted in BG

Title/Gender: Мр - Г-н
Family Name: Смиф
First Name: Джон
E-Mail: john.smith@hotmail.com
Occupation: Академична общност
On behalf of:
Address:
Telephone:
Mobile:
Fax:
Requested document(s): Четвърти законодателен пакет в областта на железнодоръчния транспорт – подготовка за неофициалната тристранна среща

1st preferred linguistic version: EN - английски
2nd preferred linguistic version: BG - български
Dear colleague,

The Transparency Service has received a request for access to document 5179/15 (a Report to Coreper on the 4th Railway Package preparing the fourth informal trilogue).

Following a preliminary examination, it would seem at first sight that there is no more reason to withhold it, as the Coreper meeting and trilogue have already taken place.

Within the due deadline, could you please let us know if the document can be released or if you still see a reason to withhold it (if so, please justify).

It is recalled that in accordance with the rules on access to Council documents(1):

- No category of documents is excluded from the scope of Regulation 1049/2001
- Partial access should always be considered
- Reasons must be stated in case of limited (partial) or total refusal and shall be based on an analysis of the harm that would be caused by disclosure (of certain parts) of the requested document(s)
- The reasons given as well as the reference to the applicable exceptions provided for in Article 4 of Regulation 1049/2001 will be stated in the reply to the applicant.

Best regards,
Dear Colleague,

Our service does not want to release document 5179/15.

Kind regards,
Dear Colleague,

Thank you for your email.

Yes, the Coreper meeting and trilogue that dealt with this document have already taken place but discussions on this legislative package are still ongoing.

Therefore, no access to protect the decision-making process.

Kind regards,
Dear Colleague,

Yes, we can indeed agree to release a part of document 5179/15.

However, even though this particular Coreper meeting and trilogue have already taken place, we would like to inform you that negotiations with the EP on the legislative package are still ongoing.

We foresee that at least a couple more informal trilogues are needed before an agreement between the two institutions can take place. At this moment revealing the Presidency strategy for these negotiations would affect the capacity of the Council to achieve its main goals.

Therefore, we would suggest to delete sections II and III of the document identifying the Presidency strategy for negotiations with the EP and the main issues still to be agreed upon.

Best regards,
Examination of requests for access: Reply to the applicant

The General Secretariat has weighed your interest in being informed of progress in this area against the general interest that progress be made in an area that is still the subject of complicated negotiations.

It considers that, at this stage, disclosure of this document which gives details about negotiating positions of the Council would be premature in that it would impede the proper conduct of the negotiations and compromise the conclusion of an agreement on this legislative package.

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 full disclosure of the document in question.

As a consequence, the General Secretariat has to refuse full access to the document at this stage.

I would also like to inform you that once the legislative act in question is adopted, this document and any other legislative document relating to these legal acts will be made available to the public.

You can ask the Council to review this decision within 15 working days of receiving this reply.

Yours sincerely,
Examination of requests for access: Reply to the applicant

Work within the Council

The examination of the proposals by the Land Transport Working Party (hereafter "the Working Group") started in 2013. In this context, the Working Group also examined the impact assessments related to the three proposals of the technical pillar. On 5 June 2014, the Council reached a political agreement on three proposals. The formalisation and transmission of the Council's first reading agreement to the European Parliament is still pending.

In the second half of the Italian Presidency, the Working Group examined several EP amendments relating to the technical pillar in October, November and December 2014 with a view to preparing for the informal trilogues which took place on 23 October, 13 November and 16 December 2014. In addition, two technical meetings with the EP were organised in order to solve as many technical issues as possible.

The fourth and first informal trilogue under the Latvian Presidency will take place on 29 January 2015. It follows two technical meetings with the EP on 16 and 23 January 2015.

ITEMS TO BE DISCUSSED AT THE FOURTH INFORMAL TRILOGUE

I. Methodology and overall approach proposed by the Presidency on the fourth Railway Package

DELETED

II. Specific issues to be discussed at the trilogue

DELETED
Examination of requests for access

Harm Test Exercise:

Analysis of document 13986/10 regarding EU external strategy on PNR agreements
Confirmatory applications

- Confirmatory request may be introduced when the GSC has refused access to a document in full or in part or when no reply has been given within the deadline.
- They are registered and submitted to the same consultation procedure as initial requests, but at this stage the Legal Service is also involved.
- A public ST document is drafted in order to inform the Information Working Party.
**Confirmatory applications**

- If refusal is to be maintained, it must be justified in the form of the "harm test", with further precision and taking into account any arguments the applicant may have invoked in its application.

- Once the Transparency Service, the Legal Service and the originating service agree, a draft reply is drafted in the form of a note to the Information Working Party ("LIMITE")
Implementing Regulation 1049/2001

**Confirmatory applications**

- If the Information Working Party agrees (by simple majority), the reply will go to Coreper/Council as a I/A item note

- If the Council's decision implies full or partial declassification, this will be done via DCL/REV or EXT version

- The Transparency Service sends the reply as adopted by the Council to the applicant
Implementing Regulation 1049/2001

❖ Deadlines: Initial requests

• Initial requests for access to documents must be answered within 15 working days,

• In exceptional cases, e.g. very large number of documents, the deadline may be extended for an additional 15 working days,

• Other exceptional cases, the Transparency Service will confer with the applicant with a view to finding a fair solution (art. 6(3))
Deadlines: Confirmatory applications

• Within 15 working days of receiving the Council’s reply, the applicant may make a confirmatory application.

• Confirmatory applications for access to documents must be answered within 15 working days,

• In exceptional cases, e.g. very large number of documents, the deadline may be extended for an additional 15 working days
Part IV – How does Transparency affect your daily work

- Definition of document
- Workflow/ CARS / Extranet / Public Register
- Ensuring traceability of documents
- The use of LIMITE v. Public Upon Circulation
- Legislative Transparency
Definition of document

All these different types of documents fall under Regulation 1049/2001:

- ST Documents
- CM Communications
- DS Documents
- SN Documents
- Internal documents
- Classified Documents
Definition of document

- **Document management system of the GSC:**
  - **Agora**: Allows GSC staff to create files. Access rights apply.
  - **Workflow**: Allows GSC staff to register official documents
  - **CARS**: Allows all GSC staff to search, identify and consult workflow documents
  - **Extranet/Delegates Portal**: Allows delegates, officials of the governments' of the MS, Commission and EEAS staff to search, identify and consult documents
  - **Public Register**: Allows public to search, identify and consult workflow documents (if public)
Public Register

• The Institutions are required to make a document register available to the public.

• The Council's Public Register has been operational since 1 January 1999 at:

  http://register.consilium.europa.eu

• It lists about 270,000 documents - 65% are public - and receives an average of 63,000 visitors per month.
What is a reference?

- A reference identifies a Council document
- It contains certain information about the document:
  - number,
  - title,
  - distribution codes,
  - author,
  - addressee,
  - date, etc.)

which is always public, regardless of whether the contents of the document are public or not
Public register

- Type of document
  - ST documents
  - ST LIMITE
  - CM Communications
  - CM LIMITE
  - ST documents classified RESTREINT UE

- Information in the register
  - Reference and content
  - Reference only
How to find the public register in the Council’s website?

Documents

- Access to Council documents: Public Register
- Policy regarding access to European Council and Council documents
- Legislative Transparency
- Treaty of Lisbon
- Archives of the Council of the EU
- Database of legislative files under the ordinary legislative procedure
Public register

ST 1 2011 INIT
European Council meeting on 4 February 2011
accessible

ST 17887 2010 INIT
3060th meeting of the Council of the European Union (GENERAL AFFAIRS), held in Brussels on 14 December 2010
partially accessible

ST 9 2011 REV 1
EUROPEAN COUNCIL DECISION appointing a member of the Executive Board of the European Central Bank
not accessible
Public register

ST LIMITE
Information provided in the reference

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ST LIMITE
Public “interface”

Brussels, 24 October 2014
(OR. en)

13443/1/14
REV 1

LIMITE

CH 26
AUDIO 51
EDUC 289
SERVICES 44
CULT 107
BUDGET 22
IND 256
MI 685

"IIA" ITEM NOTE
From: Working Party on European Free Trade Association (EFTA)
To: Permanent Representatives Committee/Council
On: 7 October 2014
No. prev. doc.: 13442/14 CH 25 AUDIO 50 EDUC 287 SERVICES 43 CULT 106 BUDGET 21 IND 255 MI 684 + ADD 1 RESTREINT UE/EU RESTRICTED

Subject: Council Decision authorising the opening of negotiations with the Swiss Confederation for an agreement on the participation of the Swiss Confederation in the Creative Europe Programme between the European Union and the Swiss Confederation
| ST 11524 2014 INIT | R | 04-07-2014 | COUNCIL REGULATION amending Regulation (EC) No 2866/98 as regards the conversion rate to the euro for Lithuania |
| | | | EN | ST 11524 2014 INIT |
| | | 11-07-2014 | | COUNCIL REGULATION amending Regulation (EC) No 2866/98 as regards the conversion rate to the euro for Lithuania |
| | | | | EN | FR | BG | CS | DA | DE | EL | ES | ET | FI | GA | HR | HU | LT | LV | MT | NL | PL | PT | RO | SK | SL | SV | X |
| | | | EN | ST 10131 2014 REV 5 |
| | | | | EN | FR | BG | CS | DA | DE | EL | ES | ET | FI | GA | HR | HU | LT | LV | MT | NL | PL | PT | RO | SK | SL | SV | X |
| | | | EN | ST 11280 2014 REV 2 |
| | | | | EN | FR | BG | CS | DA | DE | EL | ES | ET | FI | GA | HR | HU | LT | LV | MT | NL | PL | PT | RO | SK | SL | SV | X |
MUST be produced as an ST document

All texts submitted to the Council or its or its preparatory bodies which:

- serve as a basis for deliberations;
- influence the decision making process; and/or
- reflect the progress made on a given subject
DS documents, WK documents MUST:

• be converted into an ST document as soon as possible, or

• be listed in a ST document (minutes, summary record, outcome of proceedings)

SN Documents are reserved for administrative use (translations, procedures, etc.)
LIMITE v. PUBLIC

Exercise

The use of LIMITE

v. Public upon circulation
LIMITE v. PUBLIC

Documents directly accessible to the public:

• third party documents made public by the author or with his consent,
• agendas for Council meetings (incl. "A“ items)
• texts intended for publication in the OJ
• documents submitted to Council and listed under the part “legislative deliberation” of the agenda or marked “public deliberation” or “public debate”
• draft legislative acts and acts referred to in Article 8(1) CRP and respective "I/A" and "A" item notes to Coreper/Council
LIMITE v. PUBLIC

Documents directly accessible to the public, provided they are not covered by the exceptions of Article 4, Regulation 1049/2001:

• provisional agendas of committees and working parties,

• other documents, such as information notes, reports, progress reports and reports on the state of discussions but excluding Legal Service opinions and contributions
When to issue LIMITE documents:

- Third party documents, which have not been made public by the author
- Documents reflecting individual positions of delegations
- Documents containing an opinion and/or contribution from the Legal Service
Publication of preparatory documents upon final adoption of a legislative act (Annex II CRP - Article 11(6))

After adoption of the final legislative act, the General Secretariat makes available to the public all documents concerning the examination and adoption of a legislative act (unless covered by an exception).
Best Practices

• Transparency is the rule, refusal of access is the exception,
• Exceptions must be interpreted and applied strictly,
• Refusals must be motivated,
• Partial access should always be considered,
• Wider access for documents relating to legislative files,
• No automatic use of LIMITE,
• Existing instructions for drafting ST, CM, DS and internal documents should be followed,
• Given the strict time-limits, requests for access should be examined as quickly as possible.

LIMITE v. PUBLIC
Annual Reports Access to Documents
Part V: Records Management and Central Archives

« Archiving is …keeping track! »
Regulation 354/83 on the opening to the public of the historical archives of the EU

- Seeks to preserve documents of historical or administrative value and to make them available to the public
- Each institution establishes its historical archives and opens them to the public after 30 years
Keep everything? What and when to transfer?

Documents are sorted to separate those that have no administrative or historical value (Article 7 of Regulation 354/83)

• **CP 54/13**
  ST, CM and DS documents, internal notes and all kinds of correspondence

• **retention schedules**
Principle:

- After 30 years all documents are made available to the public.

Exceptions:

- classified documents (but with obligation to examine)
- data protection
- commercial interests
Where and how to get documents?

- Documents transferred to the archives are kept in the JL and Lex buildings.
- Once transferred, documents are processed, preserved, described, digitized, put on microfiche, etc.
- After 30 years paper documents are transferred to the Historical Archives of EU in Florence.
- Accessible on microfiche or in digital format.
- Descriptions are searchable on-line.
Central Archives Search Engine (CASE): Domus ➔ Tools ➔ C.A.S.E
What do we do?

- we manage documents, files in an appropriate and suitable manner for as long as they are required for business purposes,
- we file the documents in order to provide quick access to information,
- we guarantee complete and authentic files,
- identify documents that have to be preserved and destroy what can be eliminated
Archives

❖ Who to contact:

• Council’s website + Domus
• E-mail: central.archives@consilium.europa.eu
• Reading room: JL 05 FL 56
End of presentation