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|  | Brussels, 02 July 2020 |
| Ms Julia Reda  Email: ask+request-7984-22ece2d9@asktheeu.org | |
| Ref. 20/0998-em/vk  Request made on: 19.05.2020  Registered on: 20.05.2020 Deadline extension: 15.06.2020 | |
| Dear Ms Reda, | |

Thank you for your request for access to documents of the Council of the European Union.[[1]](#footnote-1)

You have requested to have access to "*any documents held by the Council related to court case C-401/19 Republic of Poland v European Parliament and Council of the European Union, including legal observations of the parties and interveners, internal documents of the Council or correspondence about this case"*, including *"short-lived information such as drafts, e-mails, text messages, or memos*".

The documents relevant to your application that have been drawn-up or received by the Council comprise the court submissions of the applicant, the Council, the European Parliament and the interveners in this case, including the application, the statement of defence of the Council and its corrigendum, the statement of defence of the European Parliament, the application for leave to intervene of the Commission, the observations of the Council on the application for leave to intervene of the Commission, the application for leave to intervene of the Portuguese Republic, the application for leave to intervene of the Kingdom of Spain, the observations of the Council on the application for leave to intervene of the Portuguese Republic, the observations of the Council on the application for leave to intervene of the Kingdom of Spain, the application for leave to intervene of the French Republic, the observations of the Council on the application for leave to intervene of the French Republic, the reply of the applicant, the request of the Council for an extension of the time-limit of the rejoinder, the rejoinder of the Council, the rejoinder of the European Parliament, the statement in intervention of the European Commission, the statement in intervention of the French Republic, the statement in intervention of the Kingdom of Spain and the observations of the applicant on the interventions. In addition, they include seven email exchanges between the agents of the Council and the agents of the European Parliament or the interveners related to the submissions in this court case or consulting delegations on the pleadings of the Council. Lastly, has been identified as relevant to your request document **11541/19** of 30 July 2019.

You may have access to document 11541/19 which is an information note of the Council Legal Service to Coreper concerning Case C-401/19 (Republic of Poland v European Parliament and Council of the European Union). However, the personal data reflected in this document, namely the names of the agents representing the Council in the court proceedings at issue, have been erased so as to protect the legitimate interests of the data subjects concerned in accordance with the data protection legal framework. [[2]](#footnote-2)

As regards the remaining documents concerned by your request, those reflect the content of court submissions in case C-401/19. The case to which those pleadings refer is currently pending before the Court of Justice of the European Union.

In that regard, we would like to draw your attention to the judgment of the Grand Chamber of the Court of Justice in Joined Cases C-514/07 P, C-528/07 P and C-532/07 P, Commission v API.

The Court underlined, in the context of the sound administration of justice, that “*the exclusion of judicial activities from the scope of the right of access to documents, without any distinction being drawn between the various procedural stages, is justified in the light of the need to ensure that, throughout the court proceedings, the exchange of argument by the parties and the deliberations of the Court in the case before it take place in an atmosphere of total serenity.*” (para 92) The Court continued: “*Disclosure of the pleadings in question would have the effect of exposing judicial activities to external pressure, albeit only in the perception of the public, and would disturb the serenity of the proceedings.*” (para 93) The Court is concerned to ensure “*the effectiveness of the exclusion of the Court of Justice from the institutions to which the principle of transparency applies*…” (para 95). The Court concluded that there is a general presumption against disclosure of pleadings during court proceedings while those proceedings remain pending.

In light of the above, the Council considers that the disclosure of the aforementioned documents would undermine the public interest in the serene conduct of court proceedings, which is protected by Article 4(2), second indent, of Regulation 1049/2001.

As regards the existence of an overriding public interest in disclosure under Regulation (EC) N° 1049/2001, the General Secretariat of the Council considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the interest protected by Article 4(2) second indent of Regulation 1049/2001.

In the view of the foregoing, the General Secretariat of the Council is unable to grant access to the documents at issue.

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.[[3]](#footnote-3)

Yours sincerely,

Fernando FLORINDO

Enclosure

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). [↑](#footnote-ref-1)
2. Pursuant to Article 4.1(b) of Regulation (EC) 1049/2001 in conjunction with Article 8 of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data. [↑](#footnote-ref-2)
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. [↑](#footnote-ref-3)