



Council of the European Union
General Secretariat

SGS18/06964

Directorate-General Communication and Information - COMM
The Director-General

Brussels, 09 -08- 2018

Mr Dustin Hoffmann
Email: ask+request-5604-c9fa8b81@asktheeu.org

Subject: your confirmatory application

Dear Sir,

Please find enclosed the reply from the Council to the confirmatory application you introduced on 21 June 2018.

You will also find the documents to which the Council decided to grant partial access

Statutory remedy notice

Pursuant to Article 8(1) of Regulation (EC) No 1049/2001, we draw your attention to the possibility to institute proceedings against the Council before the General Court¹ or to make a complaint to the Ombudsman². The conditions for doing so are laid down in Articles 263 and 228 of the Treaty on the Functioning of the European Union respectively.

Yours sincerely,

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Reijo KEMPPINEN

Enclosures

¹ For deadlines and other procedural requirements concerning the institution of proceedings at the General Court, please refer to the following page: http://curia.europa.eu/jcms/jcms/Jo2_7040/en/

² Any complaint to the Ombudsman must be made within two years of receiving the institution's final position on the matter. The Ombudsman's online complaint form is available at: <https://secure.ombudsman.europa.eu/en/atyourservice/secured/complaintform.faces>

**REPLY ADOPTED BY THE COUNCIL ON 9 AUGUST 2018
TO CONFIRMATORY APPLICATION 16/c/01/18,
made on 21 June 2018,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents.**

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43) (hereafter referred to as "Regulation No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. On 23 May 2018, the applicant submitted following request for access to documents: *In 2017, the EE Council presidency requested legal information/ legal opinion on deadlines and timeframes for the implementation/ratification concerning changes of the European Electoral Law.*
2. The General Secretariat of the Council examined this request but could not identify any document which fully corresponded to the request.
3. The only document containing "*legal information/legal opinion*" on the proposal for a Council Decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage (the 'Electoral Act') is an Opinion of the Legal Service, dated 15 March 2016 (document **7038/16** and its **COR1**).
4. In its reply dated 21 June 2018, the General Secretariat of the Council transmitted these documents to the applicant.
5. In a confirmatory application dated 21 June 2018, the applicant claims that the documents provided are not the requested documents since they date back March 2016 whereas documents requested by the Estonian Presidency in 2017 were the subject of his request.

6. The Council has carefully considered the confirmatory application. Having thoroughly examined the request concerned and carried out renewed consultations, it has re-assessed the request for access in full consideration of the principles underlying Regulation No 1049/2001, with the aim of ensuring the widest possible public access to documents.

Identification of documents

7. In so doing, the Council has carefully scrutinized the request, having due regard to the actual content of all documents held by the General Secretariat of the Council on the above-mentioned proposal for a Council Decision and in particular as regards the documents produced or received during the Estonian Presidency in 2017.
8. The Council has identified a number of documents, in the form of e-mails, originating from all Member States, except the United Kingdom, which had been collected in order to gather information on national electoral regimes and tentative timetables for implementation of the electoral law at national level.

Assessment of the right of access to these documents under Regulation 1049/2001

9. The Council considers that since the abovementioned documents do not directly relate to the discussions on the proposal on the 'Electoral Act' but describe general internal rules applicable in the Member State concerned, they need to be considered as "third party documents" in the sense of Article 4(4) and 4(5) of Regulation 1049/2001.
10. According to these provisions, Member States should give their consent before the documents can be disclosed to the public.
11. After their consultation, France and Germany requested the Council not to disclose their contribution.

Conclusions

12. The Council confirms that in order to meet as close as possible the request made by the applicant and after having consulted the Member States, the applicant may have access to the contributions made by Member States as described under point 8, with the exception of those listed under points 11 .

13. In line with Article 4.1.(b) of Regulation 1049/2001, and before disclosing to the public, all personal data contained in the documents shall be removed to protect the privacy and the integrity of individuals.
