



Council of the European Union
General Secretariat

Directorate-General Communication and Information
The Director-General

SGS18/05458

Brussels, 21 -06- 2018

Mr Mathias Schindler
Email: ask+request-5288-6fbe96dd@asktheeu.org

Subject: your confirmatory application

Dear Sir,

Please find enclosed the reply from the Council to the confirmatory application you introduced on 15 May 2018.

You will also find enclosed document 7038/16 (+ COR 1) to which the Council decided to grant full access.

Yours sincerely,

Reijo KEMPPINEN

Enclosures

**REPLY ADOPTED BY THE COUNCIL ON 21 JUNE 2018
TO CONFIRMATORY APPLICATION 12/c/01/18,
made by email on 15 May 2018,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document 7038/16 (+COR 1)**

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 "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 March 2018 the applicant introduced an initial application for access to Council Legal Service documents on the "Spitzenkandidaten" system.
2. On 15 May 2018, the General Secretariat of the Council replied to this application identifying document 7038/16 and granting partial access to it. Access to the remainder of the document was refused in order to protect legal advice and the decision-making process.
3. On the same day, the applicant introduced a confirmatory application, claiming that "there are no reasons not to disclose the document" and that "there is an overriding public interest to release the document".
4. The Council has carefully considered the confirmatory application. It has re-assessed the request for access in full consideration of the principles underlying Regulation (EC) No 1049/2001, in particular the aim of ensuring the widest possible public access to documents.
5. Indeed, the requested document relates to a special legislative decision-making process which is still ongoing. Council has still to reach the required unanimity on a compromise text which will then be transmitted to EP for its consent and will need to be approved by MS according to their national constitutional requirements in order to enter into force.

6. However, at the current state of the negotiations, the discussion in the Council is not linked to the document in question and the legal analysis developed in the opinion is no longer relevant with regards to this discussion.
 7. In light of the above, disclosure of the opinion does not appear to undermine the ongoing decision making process. The Council has therefore come to the conclusion to grant full public access to document 7038/16 and to its corrigendum (7038/16 COR 1).
 8. The Council notes that the present positive decision is based on an individual analysis of the content of the requested documents and the specific circumstances of the present case; it does under no circumstances constitute a precedent for the future, since each application shall be assessed and judged on its own merit, pursuant to the established practice of the Council.
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