



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 October 2013

14352/13

**INF 159
API 82**

NOTE

Subject: Public access to documents
- Confirmatory application No 18/c/01/13

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 22 August 2013 and registered on 23 August 2013 ([Annex 1](#))
- reply from the General Secretariat of the Council dated 2 October 2013 ([Annex 2](#))
- confirmatory application dated 2 October 2013 and registered on the same day ([Annex 3](#))

[E-mail message sent on 22 August 2013 - 19:00]

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application

This electronic form has been submitted in **FR**

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of:

Address: **DELETED**

Telephone: **DELETED**

Mobile phone: **DELETED**

Fax:

Requested document(s): Dear Sir / Madam,

I would like to be given access to Council document 6198/12 entitled "Lawfulness of the new legal architecture proposed by the Commission for the own resources system for the EU".

Thank you for your consideration of my application. (complimentary close)

1st preferred linguistic version: FR - French

2nd preferred linguistic version: EN - English



**COUNCIL OF
THE EUROPEAN UNION**

*GENERAL SECRETARIAT
Directorate-General F
Communication
Transparency*

*- Document Access/
Legislative Transparency*

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access@consilium.europa.eu

Brussels, 2 October 2013

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courriel :

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n/réf. : 13/1413/mj-em

Sir,

Your request of 22 August 2013 for access to document 6198/12 was registered on 23 August 2013. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents¹ (hereinafter referred to as "the Regulation") and the specific provisions of the Council's Rules of Procedure². On 13 September 2013, the time-limit for replying to your application was extended by 15 working days. Having examined the request, the General Secretariat has come to the following conclusion:

Document 6198/12 contains a contribution of the Council Legal Service related to the lawfulness of the new architecture proposed by the Commission for the own resources system for the EU. The document consequently contains legal advice.

The decision-making process in question is currently ongoing. The issue analysed in the opinion forms an important part of the basis for the discussions. Disclosure of the legal advice would adversely affect the negotiations by impeding internal discussions of the Council on the proposal and would hence the risk compromising the capacity of the institutions to reach an agreement on the dossier and thus undermine the decision-making process pursuant to Article 4(3), first sub paragraph of the Regulation.

¹ Official Journal L 145, 31.5.2001, p. 43.

² Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35)

The legal advice covered by this opinion is sensitive. It deals with an issue which is broad in scope and contains critical elements in the negotiations.

Disclosure of such a document would therefore undermine the protection of legal advice under Article 4(2), second indent, of the Regulation. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences.

As regards the existence of an overriding public interest in disclosure in relation to the protection of the ongoing decision-making process and the protection of legal advice under the Regulation, the General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interests so as to justify disclosure of the document.

In the view of the foregoing, the General Secretariat of the Council is unable to grant you access to this document.

Statutory remedy notice

Pursuant to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply¹.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

¹ Confirmatory applications are published in the Council's Register of documents. Please indicate whether you would like your personal data to be removed from the Council documents related to your confirmatory application. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.

[Confirmatory application - sent by e-mail on 2 October 2013 - 11:12]

Subject: Re: Ref. 13/1413-mj/em

From: **DELETED**
Sent: Wednesday, October 02, 2013 11:12 AM
To: SECRETARIAT DGF Access
Subject: Re: 13/1413/mj-em

Sir,

Thank you very much for your reply to my application for access to Council document 6198/12. In my capacity as an academic specialising in the field of the public finances of the European Union, and thus as someone who is actively involved in teaching European citizens about the financial and budgetary system of the EU – and therefore its legitimacy – I regret very much that my application was rejected.

Furthermore, I am not convinced by the very general reasons stated.

On the one hand, the risk expressed that disclosure of the document would undermine the Council's ability to seek legal advice and receive frank, objective and comprehensive advice seems to me to be overwhelmingly hypothetical and not, in any case, reasonably foreseeable. On the other hand, there can really be little doubt that there is an overriding public interest in the disclosure of documents containing the advice of an institution's legal service on legal questions arising when legislative initiatives are being debated insofar as this increases the transparency and openness of the legislative process and strengthens the democratic right of European citizens to scrutinise the information which formed the basis of a legislative act. While it is true that this overriding public interest can, within the framework of a balancing of interests, be outweighed by the particular interest of the Council in protecting its legal advice, this must still be substantiated by detailed reasons, which is not the case here.

It is for this reason that I hereby submit a confirmatory application in the hope that it will be successful, which would enable me to be as faithful as possible, in the framework of my academic research and teaching work, to the debates within and between the institutions.

(Complimentary close)

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