



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 May 2012

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NOTE

from : General Secretariat of the Council
to : Working Party on Information

Subject : Public access to documents
- Confirmatory application made by Mr Ludo Block (No 10/c/01/12)

Delegations will find attached:

- request for access to document sent to the General Secretariat of the Council on 17 February 2012 and registered on the same day ([Annex 1](#))
- reply from the General Secretariat of the Council dated 20 March 2012 ([Annex 2](#))
- confirmatory application dated 8 April 2012 and registered on 10 April 2012 ([Annex 3](#))

[E-mail message sent on 17 February 2012 - 15:06]

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 EN

Title/Gender: Mr - Mr

Family Name: Block

First Name: Ludo

E-Mail: **DELETED**

Occupation: Researcher

On behalf of:

Address: **DELETED**

Telephone:

Mobilephone: **DELETED**

Fax:

Requested document(s): Dear Madam, Sir,

Could you please provide me with digital copies of the Council documents 13867/11, 13867/1/11 and 13867/2/11.

Kind regards,

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

*Directorate-General F
Press
Communication
Transparency*

*- Access to Documents/
Legislative transparency*

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access@consilium.europa.eu

Brussels, 20 March 2012

Mr Ludo Block

e-mail:

DELETED

12/0291-nh/jj

Dear Mr Block,

Your request of 17 February 2012 for access to documents 13867/11, 13867/1/11 REV 1 and 13867/2/11 REV 2 has been registered by the "Access to Documents" unit. 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 documents (Official Journal 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, Official Journal L 325, 11.12.2009, p. 35). On 9 March 2012, 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:

Documents **13867/11**, **13867/1/11 REV 1** and **13867/2/11 REV 2** are notes from the Presidency to the Law Enforcement Working Party. They contain analysis of the scale of the crime threat against cultural property in the Member States and the selected countries of the Eastern Partnership.

Parts of these documents contain sensitive statistical and operational information. This information, if released to the public, could be misused by different criminal groups involved in organised crime and compromise the work of the competent law enforcement authorities.

Disclosure of this information would undermine the protection of the public interest as regards public security. Accordingly, pursuant to Article 4(1)(a), first indent of the Regulation (protection of the public interest with regard to public security), the General Secretariat is unable to grant you full access to these documents. However, pursuant to Article 4(6) of the Regulation, you may have access to those parts of the document which are not covered by this exception.

However, pursuant to Article 4(6) of the Regulation, you may have access to those parts of these documents which are not covered by this exception.

According 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

Enclosures

¹ Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.

[Confirmatory application sent by e-mail on 8 April 2012 - 11:37]

Message

Dear Mr. Thomsen,

Please find attached my confirmatory application in this issue.

I would welcome a confirmation of receipt.

Kind regards,

Dr Ludo Block

Attachment

Dear Mr. Thomsen,

Thank you for your letter (ref. 12/0291-nh/jj) of 20 March 2012 on my request for access to documents 13867/11, 13867/1/11 REV 1 and 13867/2/11 REV 2.

With reference to the denial of access to the largest parts of these documents, I hereby make a confirmatory application.

In your letter you motivate the denial on the following grounds:

Documents 13867/11, 13867/1/11 REV 1 and 13867/2/11 REV 2 are notes from the Presidency to the Law Enforcement Working Party. They contain analysis of the scale of the crime threat against cultural property in the Member States and the selected countries of the Eastern Partnership.

Parts of these documents contain sensitive statistical and operational information. This information, if released to the public, could be misused by different criminal groups involved in organised crime and compromise the work of the competent law enforcement authorities.

For the record, I would like to point out that the documents 13867/11, 13867/1/11 REV 1 and 13867/2/11 REV 2 are not merely ‘notes from Presidency’ but are based on the results of the questionnaire on the cultural property crimes (CM 1927/11) and – most importantly – underlie the Council Conclusions on preventing and combating crime against cultural goods of 13 December 2011. In fact, document 13867/2/11 REV 2 is the document previous to these Conclusions.

I firmly believe that in the interest of democratic governance, and in order to ensure accountability of the Council, these documents should by default be fully accessible as they form a significant part of the legitimisation for the above-mentioned Council Conclusions.

In addition to this more general reason for my confirmatory application, I question the motivation of the denial for a number of reasons.

First, and most importantly, to claim that statistics are ‘sensitive’ and that their publication could ‘compromise the work of the competent law enforcement authorities’, requires a significant amount of imagination. This reasoning shows little understanding of statistics, which by definition are aggregated information on past events. It is not motivated in the denial, nor in any way likely, how publishing statistics on past events would compromise the – by definition future - work of law enforcement authorities.

Second, it is argued that the documents also contain ‘sensitive’ operational information. While this sounds exciting, I feel that this qualification highly exaggerates the importance of the Council policy process for the actual operational work of law enforcement in the member states. Most of issues discussed in the working groups have no direct effect on the operational work of the law enforcement agencies in the member states, if at all.

Moreover, it is most unlikely that law enforcement agencies would feed any sensitive information into the EU policy-process. In fact, most law enforcement agencies in the member states by statute are not allowed to share any (sensitive) operational information outside law enforcement.

Arguing that the analysis of the aggregated data itself is sensitive, would fail to convince as well, as the analysis was policy-oriented and its main findings (hopefully) have been incorporated in the Council Conclusions on preventing and combating crime against cultural goods of 13 December 2011.

Third, the documents to which access was requested, bear the protective marking ‘Limite’. This means that - while not open for the public - these documents are accessible for several million members of the national administrations (and not only law enforcement) throughout the whole European Union without any restrictions, or monitoring.

If it is now argued that such unprotected documents contain any information that, ‘if released to the public could compromise the work of the competent law enforcement authorities’, this would imply a serious breach of classification rules, as the documents should then at least have been classified ‘restricted’.

However, apparently the documents do not contain any sensitive information at all, as the Polish Presidency did not see any reason to mark the documents accordingly. This is not so strange as they contain the outcome of a policy-oriented questionnaire that did not solicit any sensitive operational information. It has been common practice for years in the Council working groups to administer such policy-oriented questionnaires and the outcome of these questionnaires has generally fully been published.

In sum, in the interest of democratic governance and accountability in general, and with reference to the seriously flawed motivation for the partial denial of access to the documents 13867/11, 13867/1/11 REV 1 and 13867/2/11 REV 2, I maintain my request to full access to these documents.

I have no objections against making this confirmatory application public in the Council register provided of course that my personal data (address, email address and phone number) remain undisclosed.

Sincerely,
Ludo Block