



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 6 February 2014**

**6099/14**

**INF 18  
API 15**

**NOTE**

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Subject:       Public access to documents  
              - Confirmatory application No 04/c/01/14

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Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 21 January 2014, registered on 23 January 2014 ([Annex 1](#)).
- reply from the General Secretariat of the Council dated 3 February 2014 ([Annex 2](#))
- confirmatory application dated 3 February 2014, registered on the same day ([Annex 3](#)).

**[E-mail message sent on 21 January 2014 13:21]**

**From:** **DELETED**

**Sent:** 21/01/2014 13.21

**To:** INFORMATION TO THE PUBLIC

Dear Madam/Sir,

Referring to regulation 1049/2001 I hereby request access to Council documents related to the Final Judgement in the case C-280/11P.

My request covers documents produced, distributed and possibly discussed by the Council, COREPER and/or by Council Working Parties after the final judgment 17.10.2013.

In case my request should need further clarification to be processed, please let me know and I will try to specify my interest.

With best regards

**DELETED**



**COUNCIL OF  
THE EUROPEAN UNION**

**GENERAL SECRETARIAT**

*Directorate-General F  
Communication  
Transparency*

*- Access to Documents/  
Legislative transparency*

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[access@consilium.europa.eu](mailto:access@consilium.europa.eu)

Brussels, 3 February 2014

**DELETED**

**e-mail:**

**DELETED**

**Ref. 14/0122-mi/ns**

Dear **DELETED**,

We have registered your request of 24 January 2014 for access to "*documents related to the final judgment in the case C-280-11P and produced, distributed and possibly discussed by the Council, COREPER and/or by Council Working Parties after the final judgment 17.10.2013*". 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 documents<sup>1</sup> (hereafter the "Regulation") and specific provisions of the Council's Rules of Procedure<sup>2</sup> and has come to the following conclusion:

The General Secretariat has identified the following documents:

- the agenda of the meeting of the Working Party on Information (document **CM 4843/1/13 REV 1**)
- the note on the outcome of this meeting (document **16069/13**)
- the information note issued by the Council Legal Service relating to the judgment of the Court of Justice in Case C-280/11 P (document **15911/13**)
- "I/A" Item Note setting out a new reply to confirmatory application No 01/c/01/09 following the judgment of the Court of Justice in Case C-280/11 P (document **16166/13**)
- summary record of the 2478th meeting of the Permanent Representatives Committee held in Brussels on 11, 13 and 16 December 2013 (document **17667/13**)

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<sup>1</sup> Official Journal L 145, 31.5.2001, p. 43.

<sup>2</sup> Annex II to the Council's Rules of Procedure – Council Decision No 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

You may have access to those documents.

The General Secretariat has also identified document **17177/13** which is a note from the General Secretariat of the Council to the Permanent Representatives Committee on public access to documents. This document was on the agenda of the meeting of the Permanent Representatives Committee of 11 December 2013 (see document 17667/13).

Document 17177/13 concerns a sensitive political issue on which the Council has not yet taken a position. It concerns the wider issue of the general approach to be adopted by the Council following the judgment of the Court of Justice in case C-280/11 P (Council v. Access Info Europe).

The General Secretariat has weighed your interest in being informed of progress in this area against the general interest that progress be made in an area that is still the subject of negotiations.

It considers that, at this stage, full disclosure of this document which contains opinions for internal use as part of deliberations and preliminary consultations within the Council on a non-legislative issue would be premature in that it would impede the proper conduct of the negotiations and compromise the conclusion of an agreement on this delicate issue. As there is no evidence suggesting an overriding public interest to warrant immediate full disclosure of the document in question, the General Secretariat has concluded that protection of the decision-making process outweighs the public interest in disclosure. Accordingly, pursuant to Article 4(3), first subparagraph, of the Regulation (protection of the Council's decision-making process), the General Secretariat is unable to accede to your request for full access at this stage.

However, pursuant to Article 4(6) of the Regulation, you may have access to those parts of document **17177/13** which are not covered by this exception.

#### 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 reply<sup>3</sup>.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosures

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<sup>3</sup> Confirmatory applications are published in the Council's Register of documents. If you introduce a confirmatory application, your personal data will be published in the documents related to your confirmatory application only if you have given your explicit consent for this. Your reply relating to the publication of your personal data will in no way prejudice your rights under Regulation (EC) No 1049/2001.

**[Confirmatory application - sent by e-mail on 3 February 2014 - 11:54]**

**From:** **DELETED**

**Sent:** Monday, February 03, 2014 11:54 AM

**To:** SECRETARIAT DGF Access

**Subject:** RE: Confirmatory application

Ref. 14/0122-mi/ns

Dear Jacob Thomsen,

Thanks a lot for your reply to my request regarding documents related to the final judgement of the case C-280-11P.

Let me first express my gratitude for your examination of what documents are relevant for my request; this is useful in it self to understand the process.

Having said that it might not come a big surprise to you that I'm not entirely satisfied with your decision regarding document 17177/13.

If I should try to describe my request and your answer to a non-informed reader it would easily turn into a somewhat kafkaesque description:

As noted the Court decided in the first place that the disclosure of Member States' identities had not proved to give rise to a genuine risk of undermining the Council's decision-making procedures.

Now when I ask for the Council's and Member States reaction to the this judgment I receive an answer repeating the very same argument that were judged not valid by the Court. I find this being a circle argument not taking the impact of the judgment into serious consideration.

The judgement by the Court represents in my understanding a landmark decision regarding the citizens right to be informed of different positions before a final decision is taken. How this will be carried out in practical terms must most certainly have an overriding public interest as it concerns the very fundamental relations between citizens and their representatives. To be a bit solemn, some basic democratic principles are at stake here including the legitimacy of the European Union.

With this in mind I find it surprising to see that not only are national positions blanked out in document 17177/13 but also the entire content of paragraphs 3, 4, 5, 6 and 7. This makes it impossible to understand the considerations by the Council on the very clear judgement by the ECJ. I also fail to see how the General Secretariat has examined the five different articles in substance and motived a refusal of disclosure for each of them as there are no leads what so ever to their content. This gives rise to an – hopefully unjustified – suspicion that the Council is considering to circumvent the judgement of the Court, which naturally would be of an outmost public interest.

On the background of the above I hereby ask the Council to consider this confirmatory application for full access to document 17177/13, and should that not be granted for access to as wide parts as possible of the deleted paragraphs 3, 4, 5, 6 and 7 in said document based on a concrete and specific examination of the content of each of the individual paragraphs.

Yours sincerely

**DELETED**

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