



Council of the  
European Union

Brussels, 31 October 2016  
(OR. en)

13669/16

INF 186  
API 108

**NOTE**

---

From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 24/c/01/16

---

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 7 September 2016 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 4 October 2016 ([Annex 2](#));
- confirmatory application dated 24 October 2016 and registered the same day ([Annex 3](#))

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 7 September 2016 - 15:41]

From: **DELETED**  
to: Access@consilium.europa.eu  
Subject: Access to Document

Dear Sir or Madam,

I wonder if you can help. I am looking for a version of the following document that was circulated in June or July. Would you have access to this document and could send me a copy.

The document in question is COM(2014)0111/F - C7.0092/2014-2014/0059 (COD)

Thank you in advance.

**DELETED**

**From:** AccesDocs [<mailto:AccesDocs@europarl.europa.eu>]  
**Sent:** mercredi 7 septembre 2016 15:25  
**To:** **DELETED**  
**Subject:** A 10196/MDV/en\_2

Dear **DELETED**

No new COM document has been circulated in June – July; on June 16<sup>th</sup> a political understanding was reached on a framework for an EU Regulation to stop profits from trading minerals being used to fund armed conflicts (see press releases below)

<http://www.europarl.europa.eu/news/en/news-room/20160615IPR32320/conflict-minerals-meps-secure-mandatory-due-diligence-for-importers>

<http://www.consilium.europa.eu/en/press/press-releases/2016/06/16-conflict-minerals/>

The adoption of the Regulation would hopefully take place end 2016 or early 2017. Relevant documents at the different stages of the procedure are to be retrieved via the procedure file:

<http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2014/0059%28COD%29&l=en>

Kind regards



---

**TRANSPARENCY- ACCESS TO DOCUMENTS**

EPRS - European Parliamentary Research Service  
Directorate for the Library

[Public Register webpage](#)

[AccesDocs@ep.europa.eu](mailto:AccesDocs@ep.europa.eu)

---

**From:** **DELETED**

**Sent:** 26 August 2016 12:09

**To:** AccesDocs <[AccesDocs@europarl.europa.eu](mailto:AccesDocs@europarl.europa.eu)>

**Subject:** RE: A 10196/MDV/en

Thank you so much for your help. I am actually looking for a newer version of this document that has been circulated to the EP in June or July 2016, not the one that has been available for years.

Could you help with this at all?

Thanks and regards,

**DELETED**

**From:** AccesDocs [<mailto:AccesDocs@europarl.europa.eu>]

**Sent:** vendredi 26 août 2016 11:02

**To:** **DELETED**

**Subject:** A 10196/MDV/en

Dear **DELETED**

Further to your request, please find here after the links to the final version of document COM(2014)0111

<http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-111-EN-F1-1.Pdf>

<http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-111-EN-F1-1-ANNEX-1.Pdf>

Kind regards



---

**TRANSPARENCY- ACCESS TO DOCUMENTS**

EPRS - European Parliamentary Research Service  
Directorate for the Library

[Public Register webpage](#)

[AccesDocs@ep.europa.eu](mailto:AccesDocs@ep.europa.eu)

---



**Council of the European Union**

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

*Head of Unit*

Brussels, 4 October 2016

**DELETED**

Email: **DELETED**

Ref. 16/1850-mj/mf

Request made on: 08.09.2016

Deadline extension : 28.09.2016

Dear **DELETED**,

Thank you for your request for access to the document "*COM(2014)01111/F - C7.0092/2014-2014/0059 (COD) which was circulated in June or July*".<sup>1</sup>

The requested document relates to the proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas.

Document **MD 86/16** was identified as corresponding to your request.

---

<sup>1</sup> The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ 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, OJ L 325, 11.12.2009, p. 35).

I regret to inform you that access to this document cannot be given for the reasons set out below.

On 16 June 2016, the Council issued a press release to communicate on the EU political deal reached with respect to the legislative file on conflict minerals<sup>2</sup>. This political understanding is a preliminary step in the process and remains to be translated into a legal text.

Considering the sensitivity of conflict minerals within the EU and globally, both in terms of trade and developments perspectives, it is crucial to take into account the interests at stake. Disclosing the content of the political understanding at this stage of the process could seriously harm the ongoing decision-making process.

Negotiations are still ongoing and no *formal* agreement has yet been reached between the Council and the European Parliament. Disclosure to the public of the requested document at this stage would affect the negotiating process and diminish the chances of reaching an agreement with the European Parliament.

Disclosure of the document would therefore seriously undermine the decision making-process of the institutions.

Having examined the context in which the document was drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in disclosure of the document in question.

As a consequence, the General Secretariat has to refuse access to the document at this stage.<sup>3</sup>

We have also looked into the possibility of releasing parts of the document.<sup>4</sup> However, as the exception to the right of access applies to its entire content, the General Secretariat is unable to give partial access at this stage.

---

<sup>2</sup> <http://www.consilium.europa.eu/en/press/press-releases/2016/06/16-conflict-minerals/>

<sup>3</sup> Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

<sup>4</sup> Article 4(6) of Regulation (EC) No 1049/2001.

I would also like to inform you that once the legislative act in question is adopted, this document and any other legislative document relating to this act will be made available to the public.<sup>5</sup>

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>6</sup>

Yours sincerely,

Fernando PAULINO PEREIRA

---

---

<sup>5</sup> Pursuant to Article 11(6) of Annex II to the Council Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35) and unless their content is covered by Article 4(1), (2) or (3), second subparagraph, of Regulation (EC) No 1049/2001.

<sup>6</sup> Article 7(2) of Regulation (EC) No 1049/2001.  
Council documents on confirmatory applications are made available to the public. Pursuant to data protection rules at EU level (Regulation (EC) No 45/2001), if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 24 October 2016 - 09:48]

**From:** **DELETED**

**Sent:** Monday, October 24, 2016 9:48 AM

**To:** SECRETARIAT DGF Access

**Subject:** Letter from **DELETED** ref Confirmation of application for access to documents - 16/1850-mj/mf

Dear Sir or Madam,

Please find attached a letter from **DELETED**.

With kind regards,

**DELETED**



DELETED

Council of the European Union  
General Secretariat  
Directorate-General Communication and Information  
Knowledge Management  
Transparency  
Head of Unit  
By email: [Access@consilium.europa.eu](mailto:Access@consilium.europa.eu)

24 October 2016

Dear Madam,  
Dear Sir,

**Ref.: Confirmation of application for access to documents – Ref. 16/1850-mj/mf**

I am writing concerning the above-mentioned request, in which my assistant [REDACTED] asked on my behalf on 8 September 2016 access to the following document:

**Document MD 86/16 “COM(2014)0111/F - C7.0092/2014-2014/0059 (COD) circulated in June or July”.**

**This is a revised proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas.**

Access to this document was denied by the Council's Knowledge Management unit in a letter of 4 October 2016 (see the attached copy). The grounds given for denying access are that:

*Considering the sensitivity of conflict minerals within the EU and globally, both in terms of trade and developments perspectives, it is crucial to take into account the interests at stake. Disclosing the content of the political understanding at this stage of the process could seriously harm the ongoing decision-making process.*

*Negotiations are still ongoing and no formal agreement has yet been reached between the Council and the European Parliament. Disclosure to the public of the requested document at this stage would affect the negotiating process and diminish the chances of reaching an agreement with the European Parliament.*

DELETED

*Disclosure of the document would therefore seriously undermine the decision making-process of the institutions.*

*Having examined the context in which the document was drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in disclosure of the document in question.*

On those grounds, the Council concludes that the exception of Article 4(3) of the Regulation applies, in that the requested document cannot be disclosed. All parts of the document are considered to be covered by the exception, so that even partial access under Article 4(6) is denied.

**I am hereby confirming this request, and ask your services to review this position. I submit that the Council applied Regulation 1049/2001 in a mistaken way, and that I have the right to access this document without any of the exceptions invoked being applicable to the document requested.**

This is based on the following analysis.

Under Article 1 of Regulation No 1049/2001, the Council must “ensure the widest possible access to document” or, as stated in recital 4, “to give the fullest possible effect to the right of public access to documents...” This is done in order to “guarantee that the administration enjoys greater legitimacy and is more ... accountable to the citizen” (recital 2) and foster an environment “in which decisions are taken as openly as possible and as closely as possible to the citizen” (recital 1).

Article 4(3) of Regulation No 1049/2001 is one of the exceptions to this principle. As all exceptions, it must be interpreted strictly, as the Court of Justice has recalled on many occasions.

Article 4(3) is worded as follows:

*3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*

*Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure. (Emphasis added)*

For documents that are drawn-up as part of an investigation, or contain opinions as part of deliberations and preliminary consultations, before applying this exception the Council must demonstrate that disclosing the document would “*seriously undermine the institution's decision-making process.*”

The risk of the decision making processing being undermined must be reasonably foreseeable and not purely hypothetical. Indeed, the Court of Justice has clarified that the Council must “*first explain how disclosure of that document could specifically and actually undermine the interest protected by the exception*” and that “*the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical*” (see Case C-280/11 P, Council v Access Info Europe, at paragraph 31).

Concerning the protection of the institutions from external pressure, such pressure “*must be established with certainty, and evidence must be adduced to show that there [is] a reasonably foreseeable risk that the ... decision to be taken would be substantially affected owing to that external pressure*” (Case T-144/05, Pablo Muñoz v Commission, at paragraph 86). It is not sufficient for the Council to refer to the risk of external pressure in “*a vague and general way*” (*Ibid.*, paragraph 87). A “*mere possibility [of external pressure] cannot per se constitute a legitimate ground for restricting access to documents since, in accordance with the first subparagraph of Article 4(3) of Regulation No 1049/2001, the exception provided for therein must be interpreted and applied strictly*” (*Ibid.*, paragraph 88).

In the present case, the Council has provided only perfunctory explanation, and no evidence that disclosing the requested document could have any serious and concrete impact on the ongoing decision-making process.

For the above reasons, I hereby confirm my application and request the Council to review its position.

Yours sincerely,

DELETED

