



Council of the
European Union

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Brussels, 4 April 2017
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API 38

NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 09/c/01/17

Delegations will find attached the:

- request to the Council of the EU for access to documents sent to the General Secretariat of the Council on 21 February 2017 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 10 March 2017 ([Annex 2](#));
- confirmatory application dated 23 March 2017 and registered on the same day ([Annex 3](#))

[E-mail message sent to access@consilium.europa.eu on 21 February 2017- 21:40 using the electronic form available in the Register application]

From: **DELETED**

Sent: Tuesday, February 21, 2017 11:35

To: SECRETARIAT DGF Access

Subject: Electronic Request for Access

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of: **DELETED**

Address: **DELETED**

Telephone:

Mobile

Fax:

Requested document(s): Council documents 7744/2016, 8323/2016, 8851/2016 and other documents relating to the Commission's Proposal a Council Decision authorising the opening of negotiations on a Convention on the recognition and enforcement of judgments in civil and commercial matters (the Judgments Convention) in the framework of the Hague Conference on Private International Law.

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French



Council of the European Union
General Secretariat

Directorate-General Communication and Information
Knowledge Management
Transparency
Head of Unit

Brussels, 10 March 2017

DELETED

Email: **DELETED**

Ref. 17/0407-ld/mf

Request made on: 21.02.2017

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.¹

I regret to inform you that access to documents **7744/16, 8323/16, 8851/16** and to "all other documents related to the Commission's proposal for a Council Decision authorising the opening of negotiations on a Convention on the recognition and enforcement of judgements in Civil and commercial matters (the Judgement Convention) in the framework of the Hague Conference on Private International Law", cannot be given for the reasons set out below.

These document are classified as "RESTREINT UE" which means that the unauthorised disclosure of their contents could be disadvantageous to the interests of the European Union or of one or more of its Member States.²

¹ 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).

² Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU), OJ L 274, 15.10.2013, p. 1.

They contain detailed directives for the formal negotiations on the aforementioned Convention which are still ongoing and of which the release would have a negative impact on the negotiating position of the European Union in the Hague Convention on Private International Law.

Disclosure of the documents would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to the documents.³

We have also looked into the possibility of releasing parts of the documents⁴. However, as the exception to the right of access applies to their entire content, the General Secretariat is unable to give partial access at this stage.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).⁵

Yours sincerely,

Fernando PAULINO PEREIRA

³ Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

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

⁵ 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 on 23 March 2017- 16:15]

From: **DELETED**

Sent: Thursday, March 23, 2017 16:15

To: SECRETARIAT DGF Access

Subject: FW: Ref. 17/0407-ld/mf

Dear Sirs

I would like to make a confirmatory application requesting the review of the Council's decision, set out in the attached letter, to refuse my request for access to documents. I would respectfully submit that the reasons given for refusal are inadequate.

The first ground of refusal, with reference to Council decision [2013/488/EU](#) is that "the documents are classified as 'RESTREINT UE' which means that the unauthorised disclosure of their contents could be disadvantageous to the interests of the European Union or of one or more of its Member States". That is not a ground for refusal of public access under Reg. [1049/01](#).

The second ground of refusal is that disclosure would undermine the protection of the public interest as regards "international relations" (Reg. [1049/01](#), Art. 4(1)(a)). The Council states that the requested documents "contain detailed directives" for formal negotiations which are ongoing and that "release would have a negative impact on the negotiating position of the EU in the Hague Conference on Private International Law".

The suggested "negative impact" is matter of assertion only, without any supporting reasons. The Council has not sought to demonstrate how, specifically and actually, public access to each and every document falling within the scope of the request would undermine public interest in the field of international relations (Case C-350/12P, Council v in 't Veld [2014] ECLI:EU:C:2014:2039, [52]). Indeed, the Council has not even sought to identify, otherwise than by quoting the words of the request, the documents to which it seeks to apply the exception. The Council has plainly failed to discharge the burden which lies upon it, a burden which is a substantial one in light of the objectives of Reg. [1049/01](#).

The Council has also failed in its duty under Art. 4(6) of the Regulation to disclose the parts of the document not covered by an exception. The Council seeks to justify its blanket refusal to disclose on the basis that the exception of the right of access "applies to their entire content". Even if (contrary to the position set out in the preceding paragraph) the Council is justified in applying the exception to the documents in question, it seems wholly unrealistic to suppose that each and every part (title, recital, provision etc.) of each and every document can be shown to fall within the scope of that exception. Again, the Council has not even sought to identify the documents to which it is referring with any specificity, and has failed to discharge the burden which lies upon it.

The Council has also failed in its duty under Art. 4(7) of the Regulation to consider "the period during which protection is justified on the basis of the content of the document". The Council's letter does not refer to that provision. The negotiations in question have been ongoing since June 2016 (see Council document 9357/16) with the consequence that many aspects of the EU's negotiating position will already have been disclosed to other negotiating parties. Indeed, two meetings of the Special Commission of the Hague Conference have now been concluded, and a new draft of the relevant convention has been prepared and is in the public domain (see <https://www.hcch.net/en/projects/legislative-projects/judgments/special-commission>). Accordingly, even if (contrary to the position taken above) the Council is justified in applying the exception in this case, it cannot support the Council's blanket refusal to disclose any part of any of the documents.

Yours faithfully

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