



Council of the  
European Union

Brussels, 14 September 2017  
(OR. en)

12117/17

INF 151  
API 105

**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 19c/01/17

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 13 July 2017 and registered on 14 July 2017 ([Annex 1](#));
- reply from the General Secretariat of the Council dated 29 August 2017 ([Annex 2](#));
- confirmatory application dated 11 September 2017 and registered on 12 September 2017 ([Annex 3](#))

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 13 July 2017 - 22:30 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of:

Address: **DELETED**

Telephone:

Mobile: **DELETED**

Fax:

Requested document(s): Processing and storage of data in the context of the draft ePrivacy Regulation = Introduction and preliminary exchange of views ST 11107 2017 INIT  
Requirements of the Tele 2 judgement regarding data retention = Continuation of discussion ST 11110 2017 INIT.

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**Council of the European Union**

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

*Head of Unit*

Brussels, 29 August 2017

**DELETED**

Email: **DELETED**

Ref. 17/1642-ld/jj

Request made on: 13.07.2017

Registered on: 14.07.2017

Deadline extension: 07.08.2017

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.<sup>1</sup>

I regret to inform you that access to documents **11107/17** and **11110/17** cannot be given for the reasons set out below.

Document **11107/17** is a Note of 12 July 2017 from the Presidency to Delegations on the Processing and storage of data in the context of the draft e-Privacy Regulation which contains an examination of all legislative and non-legislative options to address the data retention issue, including in the context of the proposed e-Privacy Regulation. It includes questions to delegations and options that the relevant Working Party group should evaluate taking into account the advantages and disadvantages for different stakeholders of any solution.

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<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).

Document **11110/17** is a Note of 12 July 2017 from the Presidency to Delegations on the Requirements of the Tele 2 judgment regarding data retention which contains a summary of the main aspects of the Tele 2 judgment with indication of some of the initial reflections on the various aspects of the issue which is still under discussion in the preparatory bodies of the Council.

The documents therefore gives details of the on-going discussion and identify sensitive issues that need to be addressed before the Council can reach an agreement. Release to the public of the information contained in these documents would affect the discussions and negotiating processes and diminish the chances of the Council reaching an agreement as it may put delegations under additional pressure of stakeholders.

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, disclosure of the documents would be premature in that it would impede the proper conduct of the negotiations and compromise the conclusion of an agreement on these subjects.

Disclosure of documents **11107/17** and **11110/17** would therefore seriously undermine the decision making-process of the Council. As a consequence, the General Secretariat has to refuse access to the documents at this stage.<sup>2</sup>

Having examined the context in which the documents were 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 their disclosure.

We have also looked into the possibility of releasing parts of the documents<sup>3</sup>. 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).<sup>4</sup>

Yours sincerely,

Fernando PAULINO PEREIRA

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<sup>2</sup> Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

<sup>3</sup> Article 4(6) of Regulation (EC) No 1049/2001.

<sup>4</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 11 September 2017 - 18:17]

**From:** **DELETED**

**Sent:** Monday, September 11, 2017 6:17 PM

**To:** SECRETARIAT DGF Access

**Subject:** Re: Ref. 17/1642-ld/jj

To whom it may concern,

I would please like to ask the Council to review its decision - can you please let me know what the procedure is to do so?

Thank you.

Best,

**DELETED**

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