



Council of the
European Union

Brussels, 15 September 2015
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NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 18/c/01/15

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 9 July 2015 and registered on 10 July 2015 ([Annex 1](#));
- reply from the General Secretariat of the Council dated 24 August 2015 ([Annex 2](#));
- confirmatory application dated 25 August 2015 and registered on the same day ([Annex 3](#))

[Letter sent by fax to the transparency and access to documents Unit on 9 July 2015 and registered on 10 July 2015]



European Council
Council of the European Union
Request a document form

Personal information

Required fields are marked with an asterisk (*).

Mr

Ms

Family name:*

Brüggemann

First name:*

Jörn

E-Mail:*

brueggemann@btk-kanzlei.de

Occupation:

Law firm

On behalf of:

Postal Address

Full Postal Address:

DELETED

Telephone:

DELETED

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Requested document(s)

Repeal of Regulation (EC) No 1234/2007 and implementation of the EU milk quotas system until 2015 - Interpretation of the transitional rules provided for in Regulation (EU) No 1308/2013 (the new SCMO Regulation) - Questions raised at the (Agriculture) Council (11003/14)

Legal Service - Economic/financial affairs, Agriculture

Preferred linguistic version of the document(s) (provided that the document(s) exist(s) in this language):

1st option: German

2nd option: English



Council of the European Union

General Secretariat

Directorate-General Communication and Document Management

Directorate Document Management

Transparency and Access to Documents Unit

Brussels, 24 August 2015

Mr Jörn Brüggemann
Email: brueggemann@btk-kanzlei.de

Ref.: 15/1802-ws/nb

Request made on: 9 July 2015
Registered on: 10 July 2015
Deadline extended on: 3 August 2015

Dear Mr Brüggeman,

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

I regret to inform you that access to document 11003/14 cannot be given, for the reasons set out below.

Document 11003/14 is an opinion of the Council Legal Service concerning the *repeal of Regulation (EC) No 1234/2007² and the implementation of the EU milk quotas system until 2015, the interpretation of the transitional rules provided for in Regulation (EU) No 1308/2013 (the new Single CMO Regulation)³* and particularly *questions raised at the (Agriculture) Council* in this respect. The document consequently contains written legal advice to the Council.

¹ 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 (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 Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).

³ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

The legal advice in question deals with issues of great legal sensitivity, which are particularly delicate, comprehensive and contentious, namely the interpretation of the relevant EU rules on transitional application of an already repealed Council Regulation in 2015, concerning situations which still relate to the previous 2014-2015 campaign of the EU milk quotas system.

In addition, the legal advice in question deals with legal issues which are very complex (e.g. applicable rules as regards ongoing operations concerning the collection of relevant data, as well as the recovery and payment of the surplus levies still belonging to the 2014-2015 campaign period of the EU milk quotas system), and thus any disclosure of the requested document could harm the interests of the Council.

Disclosure of such a document would undermine the protection of legal advice. It would make known to the public internal legal advice of the Legal Service intended only for the members of the Council. The possibility of the legal advice in question being disclosed to the public may lead the Council and its members to display caution when requesting similar contributions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend the Council's interests in any litigation before the EU courts that may arise in relation to the legal advice in question. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence undermine the ability of the Legal Service to express its views free from external influences.

As regards the existence of an overriding public interest in disclosure in relation to the protection of legal advice under Regulation (EC) No 1049/2001, the General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interests so as to justify further disclosure of the document.

In view of the foregoing, the General Secretariat of the Council is unable to grant you any access to the requested document.⁴

We have also looked into the possibility of releasing parts of the document.⁵ However, as the exception to the right of access applies to its entire content, the General Secretariat is also unable to give partial access.

⁴ Article 4(2), second indent of Regulation (EC) No 1049/2001.

⁵ Article 4(6) of Regulation (EC) No 1049/2001.

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

Yours sincerely,

Jakob THOMSEN

⁶ Article 7(2) of Regulation (EC) No 1049/2001.
Council documents on confirmatory applications are made available to the public. According 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.

**[Letter and e-mail message sent to the transparency and access to documents Unit
(access@consilium.europa.eu) on 25 August 2015 - 11:16 AM]**

From: Jörn Brüggeman

Sent: Tuesday, August 25, 2015 11:16 AM

To: SECRETARIAT DGF ACCESS

Subject: Re: Ref. 15/1802-ws/nb

Dear Madams and Sirs,

Attached you will find a confirmatory application concerning the application for access made by Jörn Brüggeman under Regulation 1049/2001

[complimentary close]

Jörn Brüggeman

e-mail: brueggemann@btk-kanzlei.de

Your reference: 15/1802-ws/nb

**Application of 9 July 2015 for access to document 11003/14 of the Council of the EU
Reply of 24 August 2015 rejecting the application for access; Confirmatory application**

Dear Mr Thomsen,

We hereby make a confirmatory application requesting the Council of the European Union to reconsider the decision of refusal of 24 August 2015.

We represent a large number of milk producers for whom milk surplus levies have been fixed and collected since July 2015 – these levies being in some cases extremely high and threatening the producers' very existence – with reference made to the continued application of Regulation (EU) 1234/2007, in spite of the fact that the Regulation in question was repealed by virtue of Article 230(1)(a) of Regulation (EU) 1308/2013 with effect of 31 March 2015.

In fixing and collecting these milk surplus levies, the Federal Ministry of Finance of the Federal Republic of Germany explicitly invokes the opinion of the Legal Service of the Council of the European Union, to which we requested access in our application of 9 July 2015.

In its letter of 1 August 2014 to the Raiffeisen Association (Raiffesverband e.V.), the Federal Ministry of Finances (ref. no. III B 3 M7000/06/0008:001), referred explicitly to the Council Legal Service in the context of the lawfulness of the collection of the milk surplus levies. Specifically, mention was made of the fact that the Council Legal Service had concluded that, pursuant to Article 230(1)(a) of Regulation (EU) 1308/2013, the provisions of Regulation (EU) 1234/2007 were applicable without restriction.

Furthermore, it is then inferred from the legal opinion of the Council Legal Service that a milk surplus levy is still to be collected even after 31 March 2015.

A peculiar situation therefore now exists in which a legal rule adopted by the Parliament, Council and Commission by means of a formal legislative procedure (Article 230 of Regulation 1308/2013) unambiguously requires the termination of the milk surplus levy regime on 31 March 2015, while national fiscal authorities publicly take a legal position that reverses this wording, in doing so invoking statements made by the Legal Service.

In these circumstances it is unacceptable to declare the content of the opinion of the Legal Service to be confidential for reasons of 'complexity' or the 'protection of legal advice'.

Furthermore, the maintaining of secrecy is not understandable for the simple reason that, according to the recitals concerning the amendment to Regulation (EC) 595/2004 adopted in Implementing Regulation (EU) No 1380/2014 of 17 December 2014 (i.e. after the opinion of the Legal Service had been issued), any doubts as to the powers of the European Union to continue to collect milk surplus levies after 31 March 2015 for the milk quota year 2014/2015 were to be avoided by virtue of this amendment.

There is therefore clearly an overwhelming public interest in the disclosure of the opinion of the Legal Service, since this would appear to contain statements that aid the understanding of what would at first glance be an incomprehensible outcome – i.e. contradiction of the wording of a Council Regulation (repeal with effect of 31 March 2015) by an Implementing Regulation (continued application after 31 March 2015).

In addition, since the authorities on which the European Union relies to implement the surplus levy regime – in this instance, the German federal fiscal administration – invoke statements contained in the legal opinion to justify their actions, this opinion can no longer be categorised as purely internal legal advice.

This viewpoint is without merit also for the simple reason that a number of Member States (including Austria and Germany) expressed doubts as to the lawfulness of the collection of milk surplus levies after 31 March 2015 and it was these publicly expressed doubts that prompted the commissioning of this legal opinion.

The official press release of the Council of the European Union of 14 April 2014 concerning the 3308th meeting of the Council also makes explicit reference to the conclusions drawn in this opinion; there is thus a public interest in accessing the content of this opinion as it is set out in writing.

We therefore apply to now be given access to the requested document. Consent is given to names being stated in the event of publication of the confirmatory application.

Jörn Brüggeman
