



Council of the
European Union

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Eingelangt am 22/02/18

Brussels, 22 February 2018
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NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 05/c/01/18

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 20 December 2017 and registered the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 9 February 2018 ([Annex 2](#));
- confirmatory application dated 19 February 2018 and registered the same day ([Annex 3](#)).

[E-mail message sent to access@consilium.europa.eu on 20 December 2017 - 15:57]

From: Peter ask+request-4895-bc8650dd@asktheeu.org

Sent: Wednesday, December 20, 2017 15:57

To: SECRETARIAT DGF Access Access@consilium.europa.eu

Subject: access to documents request - EPBD mandates

Dear Council of the EU,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents

-ST 15509 2017 INIT
-ST 14707 2017 REV 1
-ST 14707 2017 COR 1
-ST 14707 2017 INIT
-ST 12965 2017 INIT

All the best,
Peter Teffer
EUobserver
Rue Montoyer 18B
1000 Brussels
Belgium

This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via the AsktheEU.org website.

Please kindly use this email address for all replies to this request: ask+request-4895-bc8650dd@asktheeu.org

If Access@consilium.europa.eu is the wrong address for information requests to Council of the EU, please tell the AsktheEU.org team on email team@asktheEU.org

This message and all replies from Council of the EU will be published on the AsktheEU.org website. For more information see our dedicated page for EU public officials at <https://www.asktheeu.org/en/help/officers>



Council of the European Union

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

Head of Unit

Brussels, 9 February 2018

Mr Peter Teffer

Email: ask+request-4893-097ac119@asktheeu.org

Ref. 17/2683-mj/jg

Request made on: 20.12.2017

Deadline extension: 19.01.2018

Dear Mr Teffer,

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

Please find attached partially accessible versions of documents 12965/17, 14707/17 and 15509/17.² However, I regret to inform you that full access cannot be given for the reasons set out below.

I regret to inform you that access to documents 14707/17 COR 1 and 14707/1/17 REV 1 cannot be given for the reasons set out below.

Document 12965/17 is a Note of 24 October 2017 from the General Secretariat of the Council to Delegations on a *Proposal for a directive of the European Parliament and of the Council amending Directive 2010/31/EU on the energy performance of buildings*. It concerns the preparation for the trilogue.

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

Document **14707/17** is a Note of 27 November 2017 on the same proposal. It contains a mandate for the second trilogue.

Document **14707/1/17 REV 1** is a revised version of the abovementioned note dated 8 December 2017.

Document **15509/17** is a Note of 13 December 2017 on the same proposal. It concerns the preparation for the third trilogue.

This proposal was submitted by the Commission to the European Parliament and to the Council on 1 December 2016. Since then, it has been examined by the **Working Party on Energy** several times.

These notes were drafted to prepare for informal trilogues between the Council and the European Parliament. The documents contain compromise proposals from the Presidency with a view to reaching a first reading agreement between the two institutions.

Although the Council and the European Parliament reached a *provisional* agreement on this proposal on 19 December 2017, the *formal* agreement has not yet been reached between the two institutions. Full disclosure to the public of the information contained in the notes at this stage would affect the negotiating process and diminish the chances of reaching a formal agreement with the European Parliament.

Full disclosure of the documents would therefore seriously undermine the decision-making process of the institutions.

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 full disclosure of the documents in question.

As a consequence, the General Secretariat is not able to grant full access to these documents at this stage.³

However, as abovementioned, pursuant to Article 4(6) of the Regulation, you may have access to those parts of documents **12965/17**, **14707/17** and **15509/17** which are not covered by this exception.

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

We have also looked into the possibility of releasing parts of documents 14707/17 COR 1 and 14707/1/17 REV 1.⁴ 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.

I would also like to inform you that once the legislative act in question is adopted, these documents and any other legislative documents relating to this act will be made fully available to the public.⁵

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

Yours sincerely,

Ramón CHISMOL IBÁÑEZ

Enclosures

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

⁵ 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.

⁶ 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 19 February 2018 - 14:26]

From: Peter <ask+request-4895-bc8650dd@asktheeu.org>

Sent: Monday, February 19, 2018 14:26

To: SECRETARIAT DGF Access <Access@consilium.europa.eu>

Subject: Internal review of access to documents request - EPBD mandates

Dear Madam, Sir,

Please pass this on to the person who reviews confirmatory applications.

I am filing the following confirmatory application with regards to my access to documents request on the EPBD, which was send on 20 December 2017. I refer to the Council's reply dated 9 February 2018, denying access to documents 14707/17 COR 1 and 14707/1/17 REV 1.

The reason given is that the proposed legislation has not yet been voted on in parliament and council.

"Although the Council and the European Parliament reached a provisional agreement on this proposal on 19 December 2017, the formal agreement has not yet been reached between the two institutions. Full disclosure to the public of the information contained in the notes at this stage would affect the negotiating process and diminish the chances of reaching a formal agreement with the European Parliament."

However, this stance poses considerable problems for European democracy. It would mean that the decision-making process would only become public after the proposed regulation has already been adopted.

If citizens, potentially via media, are not able to know the steps leading up to the final compromise text, they are not well-informed enough to tell their MEPs or national governments representing them in the Council whether they would like the legislative proposal to be supported. This could seriously undermine their potential to influence policy-making.

I have doubts that disclosure would "seriously undermine" the decision-making process, as is required by the regulation, and believe that there is an overriding public interest to make the documents public.

All the best,
Peter Teffer
EUobserver
Rue Montoyer 18B
1000 Brussels
Belgium

A full history of my request and all correspondence is available on the Internet at this address:
https://www.asktheeu.org/en/request/epbd_mandates

Please use this email address for all replies to this request:

ask+request-4895-bc8650dd@asktheeu.org

This message and all replies from Council of the EU will be published on the AsktheEU.org website. For more information see our dedicated page for EU public officials at
<https://www.asktheeu.org/en/help/officers>