



Council of the  
European Union

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Eingelangt am 25/06/18

Brussels, 25 June 2018  
(OR. en)

10424/18

INF 123  
API 76

**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 17/c/01/18

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Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 17 May 2018 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 1 June 2018 ([Annex 2](#));
- confirmatory application dated 22 June 2018 ([Annex 3](#)).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 17 May 2018 - 11:30 using the electronic form available in the Register application]

This electronic form has been submitted in EN

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of: **DELETED**

Address: **DELETED**

**DELETED**

**DELETED**

**DELETED**

Telephone: **DELETED**

Mobile: **DELETED**

Fax:

Requested document(s): Dear Sir/ Madam,

On behalf of **DELETED**, I would like to request full public access to all documents relating to the correspondence and talks between the Council, the EU Member States and the US authorities on the consequences of the Foreign Account Tax Compliance Act from the time period of July 2015 until present.

Yours faithfully,

**DELETED**

On behalf of **DELETED**

1st preferred linguistic version: EN - English

2nd preferred linguistic version: NL - Dutch



**Council of the European Union**

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

*Head of Unit*

Brussels, 1 June 2018

Ms **DELETED**  
Email: **DELETED**

Ref. 18/1007-mw

Request made on: 17.05.2018

Dear Ms **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 the following documents related to your request cannot be given for the reasons set out below:

WK 1075/17

WK 1086/17

WK 3981/17

WK 3981/17 REV1

WK 3981/17 REV2

Document **WK 1075/17** is a working paper concerning the state of play of the intergovernmental agreements between the US and EU Member States. It contains questions related to problems that EU Member States may be have to face in relation to FATCA.

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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 WK 1086/17 is a working paper from The Netherlands concerning the particular position of US non residents citizens living in Europe.

Document WK 3981/17 - and the two revised versions WK 3981/17 REV1 and WK 3981/17 REV2 - is a note concerning issues faced by residents, financial institutions and governments of EU Member States in relation to FATCA.

All of these documents are fairly recent and concern difficult issues that are still debated within the Council. Release would affect the decision-making process, since the sensitive issues concerned continue to be discussed and any disclosure would seriously hamper the efforts to find solutions for them; in this regard, the General Secretariat has not identified any overriding public interest in release of these documents.

The documents also concern delicate issue touching on relations with third country, and release of the information contained in the documents would both severely affect the EU's position on the international level and considerably undermine internal discussions, putting in jeopardy a successful outcome.

Full disclosure of the documents would therefore seriously undermine the protection of the public interest as regards international relations as well as the decision-making process. As a consequence, the General Secretariat has to refuse full access to these documents.<sup>2</sup>

We have also looked into the possibility of releasing parts of the documents.<sup>3</sup> However, as the exceptions to the right of access apply to their entire content, the General Secretariat is also unable to give partial access.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>4</sup>

Yours sincerely,

Sally BLISS

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<sup>2</sup> Article 4(1)(a), third indent, and – in the absence of any evidence of an overriding public interest in release – 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 22 June 2018 - 11:07]

**From:** **DELETED**

**Sent:** Friday, June 22, 2018 11:07 AM

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

**Cc:** **DELETED**; **DELETED**

**Subject:** RE: Ref. 18/1007-mw

Dear Sir/Madam,

Hereby I would like to file the confirmatory application for file Ref. 18/1007-mw.

Kind regards,

On behalf of **DELETED**,

**DELETED**

Dear Mrs. Bliss,

I have received your letter with reference Ref. 18/1007-mw , of 01.06.2018 in reply to my request of 17.05.2018 for access to *all documents relating to the correspondence and talks between the European Commission, the EU Member States and the US authorities on the consequences of the Foreign Account Tax Compliance Act from the time period of July 2015 until present.*

With your letter, the Council granted refused access to any documents.

With the present letter, I submit a confirmatory application requesting the Council to reconsider its position, on the basis of Article 7(2) of Regulation 1049/2001 on access to documents (the Regulation), and to provide full access to all documents.

### **1 - Public interest as regards international relations**

The Council refuses to grant access, both fully and partially, to the documents requested as stated above, because releasing these documents may harm the public interest, in particular the international relations. (Article 4(1)) The Council argues that the files identified are subject of an ongoing debate within the Council, and therefore unsuitable for release. Releasing these files, would hamper the efforts to find solutions for them, according to the Council.

Refusal on the grounds that certain files are topic of an ongoing debate, or would relate to such debate, would severely hamper the possibilities of accessing documents and hamper the application of Regulation 1049/2001. Furthermore, any document which is ‘fairly recent’ may still be topic of debate. Therefore, this criterion would *de facto* lead to the impossibility of receiving any ‘fairly’ recent documents. In the *In ‘t Veld versus Council*-case (T-529/09), point 20 it is stated very clearly:

*“[...] the mere fact that a document concerns an interest protected by an exception cannot justify application of that exception. Such application may, in principle, be justified only if the institution has previously assessed, firstly, whether access to the document would specifically and actually undermine the protected interest and, secondly, in the circumstances referred to in Article 4(2) and (3) of Regulation No 1049/2001, whether there was no overriding public interest in disclosure. Further, the risk of a protected interest being undermined must be reasonably foreseeable and not purely hypothetical (see Case T-36/04 API versus Commission [2007], ECR II-3201, paragraph 54 and the case-law cited).”*

At the time of that request, parties were negotiating on the terms of the intergovernmental agreements. Nevertheless, this posed no reason for refusal of the access, according to the court.

Furthermore, the argument that releasing the documents may have a negative effect on the relations with a third country does not hold. *De facto*, any document that relates to an international issue is barred from access. As quoted above, it needs to be assessed specifically and actually if the release of the documents undermines the protected interested. In this case, these criteria are not met.

A legitimate public interest exists to thousands of European Citizens affected by the FATCA-legislation. Clarity on their legal position and the stance of the Council is of paramount importance to safeguard their basic human rights under the Chapter. FATCA results in the refusal of financial institutions to offer services and severely impacts individuals by creating a double taxation.

Even when, which we contest, full release is impossible, no reason was given that partial release of the documents was impossible.

On the basis of the reasons outlines above, I urgently request the Council to reconsider its position and grant access to the documents requested. Furthermore, I request the Council to specify why the refused documents specifically and actually undermine the public interest, in particular the international relations.

Regards,

**DELETED**

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