



Council of the  
European Union

034577/EU XXVI. GP  
Eingelangt am 13/09/18

Brussels, 13 September 2018  
(OR. en)

12036/18

INF 162  
API 101

**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 25/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 July 2018 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 29 August 2018 ([Annex 2](#));
- confirmatory application dated 11 September 2018 and registered on the same day ([Annex 3](#)).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 17 July 2018- 10:34]

From: **DELETED**  
Sent: Tuesday, July 17, 2018 10:34 AM  
To: SECRETARIAT DGF Access <Access@consilium.europa.eu>  
Subject: Electronic Request for Access

Title/Gender:

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of: **DELETED**

Address: **DELETED**

Telephone: **DELETED**

Mobile:

Fax:

Requested document(s): ST 11167 2018 INIT dated 16-07-2018

Draft assessment of the implementation of commitments [relating to the list of non-cooperative tax jurisdictions]

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**Council of the European Union**

General Secretariat

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit / Transparency

*Head of Unit*

Brussels, 29 August 2018

Mr **DELETED**

Email: **DELETED**

Ref. 18/1496-em/jj

Request made on: 17.07.2018

Deadline extension: 07.08.2018

Dear Mr **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 document **ST 11167/18** cannot be given for the reasons set out below.

Document **ST 11167/18** is a classified document, bearing the classification "RESTREINT UE".

This means that the unauthorised disclosure of its contents could be disadvantageous to the interests of the European Union or of one or more of its Member States.<sup>2</sup>

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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).

<sup>2</sup> 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.

The document in question is a note from the Commission services to the Code of Conduct (Business Taxation) Group of the Council of the EU. It contains a draft assessment of the implementation of commitments in the area of taxation by third countries' jurisdictions and recommendations as to their possible removal from the EU list of non-cooperative jurisdictions.

The establishment and monitoring of EU list of non-cooperative jurisdictions is a sensitive exercise that has an impact on the EU's diplomatic relations with third countries. For this reason, classified documents are used in most cases. Release of the information contained in the requested document would prejudice relations between the European Union and the third countries concerned.

Disclosure of the document 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 document.<sup>3</sup>

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>3</sup> Article 4(1)(a), third indent, 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 2018 - 11:27]

**From:** DELETED

**Sent:** Tuesday, September 11, 2018 11:27 AM

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

**Subject:** RE: Ref. 18/1496-em/jj

Dear Sir / Madam

Many thanks for your letter of 29 August concerning access to document ST 11167/18.

In view of your denial of access to the document I wish to make a confirmatory application to gain access to the document in line with Article 7(2) of Regulation (EC) No 1049/2001.

Without prejudice for other reasons that may necessitate the documents being released, I would also submit that:

- The documents and analysis contained therein are a matter of significant public interest, concerning the extent to which policies in the jurisdictions concerned decrease the public money that may be available for schools, hospitals and investment and so forth within the EU, and the extent to which third country jurisdictions have made formal commitments made to the EU.
- In 15 May remarks to the European Parliament, Ombudsman Emily O'Reilly made clear that the work of the code of conduct group fell within her mandate, and that the analysis undertaken in preparing the list of non-cooperative third country jurisdictions in particular demanded a "high level of transparency", and indicated that she would be prepared to respond to any complaints made concerning transparency of the process.
- The sole grounds for refusal of release you cite is Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001, which concerns international relations, and you cite the damage to diplomatic relations with third countries. While the territories concerned are indeed non-members of the EU, many of them are territories whose diplomatic relations are managed by member states of the union. For example, according to the British Ministry of Justice, "The UK Government is responsible for defence and international representation of the Crown Dependencies." The diplomatic relations which the Council is concerned about protecting are hence in fact diplomatic relations with a member state of the European Union, the UK, which cannot fall within the "international relations" exemption of Regulation 1049/2001. Similar observations may apply to many of the other jurisdictions in question.

- In principle I do not see why publishing an objective analysis of the extent to which jurisdictions have met commitments which were made in writing, and in many cases in public, to the European Union, should have a bearing on diplomatic relations. These are, or should be, statements of or assessments of facts to which the public is entitled to have access.
- Though the document is a commission document, not a council document, the Commissioner responsible, Pierre Moscovici has previously told me in on-the-record remarks that the process should “*have more transparency... the process itself [of drawing up the list of non-cooperative jurisdictions] could even be more transparent.*”

I look forward to hearing further from you.

Kind regards

**DELETED**

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