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NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
No. prev. doc.:	15848/17
Subject:	Public access to documents - Confirmatory application No 26/c/02/17

Delegations will find enclosed a draft reply from the Council to confirmatory application No 26/c/02/17, approved by written consultation which ended on 8 January 2018 with Hungary voting against, and Romanian abstaining.

The following statement was made:

HU: *"Hungary is of the opinion that Article 4 (3) of Regulation (EC) 1049/2001 should be applied to the requested documents since they reflect preliminary internal considerations in a decision-making process which has not yet come to its end and thus their release might undermine the inter-institutional negotiations that are still to be conducted. In Hungary's view the public interest with regard to the transparency of the procedure is already duly served by the publication of the Council's mandate for the inter-institutional negotiations."*

Delegations agreed to publish the result of the vote.

It is suggested that the Council, by written procedure, record its agreement on the draft reply annexed to this document.

The annex is available in English only.

**REPLY ADOPTED BY THE COUNCIL ON 8 JANUARY 2018
TO CONFIRMATORY APPLICATION 26/c/01/17,
made by email on 31 October 2017,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document ST 10783/17 INIT and ST 10783/17 ADD 1.**

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43) (hereafter referred to as "Regulation No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, OJ L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. On 20 September 2017, the applicant filed an initial application for access to documents **10783/17 INIT** of 30 June 2017 and **10783/17 ADD 1** of 20 July 2017 which are preparatory documents submitted by the General Secretariat of the Council to the Working party on General Affairs as a basis for discussions on a draft Council Decision on the regulation of interactions between officials of the General Secretariat of the Council and interest representatives and on the related Code of Conduct.
2. On 18 October 2017, the General Secretariat of the Council replied to this application, refusing access to requested documents, based on Article 4(3), first subparagraph, of Regulation No 1049/2001, since their disclosure would seriously undermine the decision-making process of the Council.

3. On 31 October 2017, the applicant filed a confirmatory application against this refusal, contending that the Council failed to justify a specific and effective harm to the decision-making process in case of disclosure, and also did not sufficiently take into account the important public interest in disclosure of information on draft legislation concerning transparency of lobbying activity.
4. The Council has carefully considered the confirmatory application. Having thoroughly examined both the applicant's arguments and the documents concerned by the request and carried out renewed consultations, it has re-assessed the request for access in full consideration of the principles underlying Regulation No 1049/2001, with the aim of ensuring the widest possible access to documents.
5. The Council notes in particular that it has meanwhile reached an agreement on the mandate to the Presidency for engaging in inter-institutional negotiations with the view of finding an agreement on the establishment of a Mandatory Transparency Register and that the Draft Council Decision and Code of Conduct are part of the political package to be discussed. The Council further decided to make the said mandate public. In light of this considerations, the Council has come to the conclusion that full public access to documents 10783/17 INIT and 10783/17 ADD 1, which are preparatory documents in this process, should now be granted.
6. The Council notes, however, that the present positive decision is based on the facts of the concrete confirmatory application concerned, and under no circumstances it can constitute a precedent for the future, since each application shall be assessed and judged on its own merit, pursuant to the established practice of the Council.