



Council of the
European Union

075812/EU XXVI. GP
Eingelangt am 24/09/19

Brussels, 24 September 2019
(OR. en)

12408/19

INF 255
API 125

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 28/c/01/19

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 5 August 2019 and registered the same day (Annex 1);
- reply from the General Secretariat of the Council dated 16 September 2019 (Annex 2);
- confirmatory application sent by regular post, dated 16 September 2019 and registered on 20 September 2019 (Annex 3).*

* The applicant gave his specific consent for his name to be made public in all correspondence.

[E-mail message sent to access@consilium.europa.eu on 5 August 2019 - 14:52 using the electronic form available in the Register application]

Title/Gender: Mr - Herr

Family Name: Domke

First Name: Patrick

E-Mail: **DELETED**

Occupation:

On behalf of:

Address: **DELETED**

Telephone:

Mobile:

Fax:

Requested document(s): ST 10791 2019 INIT

1st preferred linguistic version: DE - Deutsch

2nd preferred linguistic version: EN - Englisch



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, 16 September 2019

Herrn Patrick Domke
Email: **DELETED**

Ref. 19/1757-em/ns

Request made on: 05.08.2019
Deadline extension: 27.08.2019

Dear Mr Domke,

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

I regret to inform you that access to document **ST 10791/19** cannot be given for the reasons set out below.

Document **ST 10791/19** 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 States².

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 report on the progress made in the implementation of commitments in the area of taxation by a third country, the Cayman Islands. The document identifies difficulties that still need to be addressed by the jurisdiction and makes

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 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.

suggestions as to the way forward in this area. The decision-making process related to the assessment of the progress achieved by the jurisdiction is ongoing and the disclosure of the information thereon would be detrimental to the process and diminish the chances of the Council reaching an agreement on the assessment. Disclosure of the document at this stage would therefore seriously undermine the decision-making process of the Council. Hence, the General secretariat of the Council has to refuse access to the document at this stage.³

Moreover, 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 country concerned. Disclosure of the document at this stage 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 document⁴.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).⁵

Fernando FLORINDO

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

⁴ Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

⁵ 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 (EU) No 2018/1725, if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

Received on
19. 09. 2019

Patrick Domke
Katzwanger Bahnweg 133
91126 Schwabach
GERMANY

Patrick Domke • Katzwanger Bahnweg 133 • D-91126 Schwabach

IM 009888 2019
20.09.2019

General Secretariat of the Council of the EU
DG F – Transparency
Rue de la Loi 175
1048 BRUXELLES
BELGIUM

16 September 2019

Confirmatory Application under Article 7(2) of Regulation (EC) No 1049/2001

To Whom It May Concern:

Thank you for your Email dated 16 September 2019 regarding my application to the General Secretariat of the Council of the European Union under Regulation (EC) No 1049/2001, which you have registered under the reference number 19/1757.

In this Email, you notified me that you had to reject my application under the provisions of

- a) Article 4(3) Subparagraph 1 of Regulation (EC) No 1049/2001 and
- b) Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

I hereby ask the Council of the European Union (hereinafter "the Council") to reconsider its position in accordance with Article 7(2) of Regulation (EC) No 1049/2001 and would like to add the following points to my initial request:

I assume that the ongoing decision-making process regarding the assessment of the progress made by the Cayman Islands with regards to the COCG's concerns mentioned in your Email is the one addressed in paragraph 5 of Document *ST 9674 2019 REV 1*. If that were the case, the description of the document in question (*ST 10791/19*) in your Email would suggest that the format of *ST 10791/19* would to a large extent resemble that of Annex I of Document *ST 7222/19*. I therefore kindly ask the Council to provide me with the original document that it received by COCG experts in 2017, as its content appears to be largely in public domain anyway (published as an annex to the aforementioned document, hence Article 4(3) Subparagraph 1 of Regulation (EC) No 1049/2001 can no longer apply with regards to this document in my opinion).

I furthermore understand that the findings in *ST 7222/19* were the primary reason why the Council took the decision outlined in paragraph 5 of Document *ST 9674 2019 REV 1*. If that were the case, then it would be incomprehensible in my opinion why the Council has notwithstanding Article 4(3) Subparagraph 1 of Regulation (EC) No 1049/2001 decided to put *ST 7222/19* into public domain unredactedly but refuses to do so in the case of other assessments produced by the COCG with regards to the Cayman Islands citing the provisions of Article 4(3) Subparagraph 1 of Regulation (EC) No 1049/2001, even though Annex I of

ST 7222/19 informs the same continuous and ongoing decision-making process in the Council. Based upon these arguments, I would like to extend my request to the following documents:

- *ST 14618/17*;
- *ST 14626/17*;
- The original letter sent by the COCG to the authorities of the Cayman Islands, to which the latter have replied with the two aforementioned documents;
- *ST 8981/19 ADD 3*;
- *ST 8981/19 INIT*;
- If *ST 10791/19* does not resemble the format of Annex I to *ST 7222/19*, any such documents which do and have been produced after 12 March 2019.

In case the Council refused my application again, I call upon the Council to elaborate on why the disclosure of the documents in question

1. would "seriously undermine the institution's decision-making process" for the purposes of Article 4(3) Subparagraph 1 of Regulation (EC) No 1049/2001;
2. would undermine the public interest with regards to EU's international relations, given that *ST 7222/19* apparently does not and an analysis of the legislative efforts of another country which were implemented partly at the Council's request and then welcomed by the Council itself in its decision of 12 March 2019 hardly constitutes a threat to the Union's relations with the Cayman Islands.

I explicitly consent to the publication of my name when the Council puts the documents relating to my confirmatory application into public domain.

Lastly, I would like to request that all further correspondence with regards to my enquiry be conducted by hard copy mail (my postal address is listed above).

Thank you very much in advance!

Yours faithfully,

PATRICK DOMKE