



Council of the
European Union

008120/EU XXVI. GP
Eingelangt am 17/01/18

Brussels, 17 January 2018
(OR. en)

5415/18

INF 9
API 9

NOTE

From:	General Secretariat of the Council
To:	Working Party on Information
Subject:	Public access to documents - Confirmatory application No 03/c/01/18

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 15 December 2017 and registered the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 16 January 2018 ([Annex 2](#));¹
- confirmatory application dated 16 January 2018 and registered the same day ([Annex 3](#)).

¹ Delegations are informed that there was a typo error in the date of the second letter of reply. The correct date should be 16 January 2018.

[E-mail message sent to access@consilium.europa.eu on 15 December 2017 - 10:35 using the electronic form available in the Register application]

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: **DELETED**

On behalf of:

Address: **DELETED**

Telephone: **DELETED**

Mobile:

Fax:

Requested document(s): ST 15555 2017 INIT

ST 15558 2017 INIT

ST 15289 2017 INIT

ST 14868 2017 INIT

ST 14871 2017 INIT

ST 12181 2017 ADD 2

ST 13214 2017 INIT

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FI - Finnish



Council of the European Union

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

Head of Unit

Brussels, 21 December 2017

Mr **DELETED**
Email: **DELETED**

Ref. 17/2648-ADD-ld/jj

Request made on: 15.12.2017

Dear Mr **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.²

Further to my letter of 21 December 2017, I regret to inform you that access to document **15289/17** can't be granted for the reasons set out below.

Document **15289/17** is a Note of 1 December 2017 from the Presidency to the Working Party on Substantive Criminal Law (DROIPEN) on the Proposal for a Directive on combating fraud and counterfeiting of non cash-means of payment, which contains in its Annex a contribution from EUROPOL.

In accordance with Article 4(4) of Regulation (EC) No 1049/2001, EUROPOL was consulted in order to assess whether access to this document could be granted.

² 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).

The document contains a scenario-based example of a typical non cash payment fraud case, which although not a real case, represents the modus operandi behind such a crime and makes references to real countries and third partners that Europol cooperates with. The release of such information to the public, even though in the context of a mock scenario and examples to support the arguments related to the draft articles of the Draft NCPF Directive, would risk undermining investigations and operational activities by the law enforcement authorities of the Member States and third parties in their fight against cybercrime. Moreover, the release of the information and references of specific entities would also have a negative impact on the cooperative relations between Europol and its partners, consequently preventing Europol from fulfilling its tasks.

Disclosure of document **15289/17** would therefore undermine the protection of the public interest as regards public security.³ As a consequence, the General Secretariat has to refuse access to this document.

Having examined the context in which the document was 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 its disclosure.

We have also looked into the possibility of releasing parts of the document.⁴ However, as the information contained in the document forms an inseparable whole, 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).⁵

Yours sincerely,

Ramón CHISMOL IBÁÑEZ

³ Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

⁴ Article 4(6) 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 (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 16 January 2018 - 16:09]

From: **DELETED**

Sent: Tuesday, January 16, 2018 4:09 PM

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

Subject: Re: Ref. 17/2648-ADD-ld/jj

Good evening,

I would ask you to reconsider your position of refusing my access to the document. If the result after reconsideration remains the same, is that decision a reviewable act for the purposes of art. 263 TFEU? If it is, what is the time frame to do so?

DELETED
