



**Brussels, 8 December 2020
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API 137**

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	13396/20
Subject:	Public access to documents - Confirmatory application No 26/c/01/20

1. On 15 October 2020 an initial application was introduced through an online platform for access to, 'in compliance with art. 11 of the cited Regulation 1049/01, a listing of the Council documents coded as "WK" linked to pending EU legislative procedures debated in the Council working groups or by the Coreper in September 2020; in compliance with art. 12 of the cited Regulation 1049/01, the texts of the following documents : WK 5230/17, WK 12197/17, WK 12197/2017 REV1, WK 10931/17 as well as of the other more recent WK documents related to the legislative procedure 2016/0107 (COD) amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (CBCR)'.
2. By letter dated 6 November 2020, the General Secretariat produced the requested list of WK documents. In a subsequent letter dated 10 November 2020 the General Secretariat further released some documents and refused access in full to documents WK 6662/18 INIT, WK 14969/17 REV 1, WK 14969/17 INIT, WK 5230/17, WK 12197/17, WK 12197/2017 REV1, and WK 10931/17¹. The applicant then introduced a confirmatory application on 25 November 2020².

¹ 13396/20

² 13396/20

3. The scope of this request is very similar to confirmatory application 8/20 insofar as the documents are concerned³. For that confirmatory application, the General Secretariat of the Council prepared a draft reply granting access to the requested documents and submitted it for assessment to the Working Party on Information (WPI) by written consultation⁴. During informal exchanges, some delegations expressed divergent views and/or changed their initial position. An informal videoconference of the members of the WPI attempted to clarify the positions of delegations. Further to these discussions, the Council decided to refuse access to the requested documents⁵.
4. In addition to the challenges identified above regarding this legislative file, in this confirmatory application the applicant contends that according to Articles 11 and 12 of Regulation (EC) No 1049/2001, WK documents in legislative files should be both referenced and publicly available in the public register of Council documents.
5. In the meantime, the deadline for replying to the applicant will expire on 17 December 2020. An extension is possible until 18 January 2021. As from that date, the applicant will be entitled to institute court proceedings and/or make a complaint to the Ombudsman⁶.
6. In this context, the Presidency has decided to organise an informal videoconference of the members of the WPI to discuss a possible draft reply.
7. Further to that consultation, and in accordance with its views, the General Secretariat of the Council will prepare a draft reply and launch a written consultation of the WPI for the approval of the draft reply at the Working Party level. Following the written consultation, the draft reply will be submitted to Coreper (Part 2) for endorsement of the draft reply and decision on its adoption by written procedure. Following Coreper's decision, the written procedure will be launched for the final adoption of the draft reply.

³ See 8689/20 containing the reply adopted by the Council early July.

⁴ 7057/20.

⁵ Based on 8689/20.

⁶ Article 8(3) of 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).