



Council of the
European Union

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Eingelangt am 06/05/21

Brussels, 6 May 2021
(OR. en)

8500/21

INF 127
API 74

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 18/c/01/21

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 20 March 2021 and registered on 22 March 2021 (Annex 1);
- reply from the General Secretariat of the Council dated 4 May 2021 (Annex 2);
- confirmatory application dated 4 May 2021 and registered on the same day (Annex 3).

[Email message sent to the General Secretariat of the Council on 20 March 2021 at 21:39]

From: **DELETED**

Sent: Saturday, March 20, 2021 9:39 PM

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: access to documents request - CBCR Documents

Dear Council of the European Union,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting the following documents:

WK5230/2017

WK12197/2017

WK12197/2017 REV1

WK 10931/17

Yours faithfully,

DELETED



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, 4 May 2021

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

Ref. 21/0710-dcp/nb

Request made on: 20.03.2021
Registered on: 22.03.2021
Deadline extension: 15.04.2021

Dear **DELETED**,

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 documents **WK 5230/17**, **WK 12197/17**, **WK 12197/2017 REV1**, and **WK 10931/17** cannot be given for the reasons set out below.

These documents contain exploratory options and possible compromise solutions relating to an ongoing discussion on a particularly difficult and sensitive legislative file relating to tax transparency and tabled by the previous Commission in 2016. After several years of negotiations, the Council agreed on a negotiating mandate very recently only², and trilogue negotiations with the European Parliament have just started.

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 Document 6399/21 in the Council public register:
<https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/>

These documents are not meant to become public at this stage of the negotiation since their release would severely affect the negotiating process and diminish the chances of reaching an agreement in order to agree on the legislative act. Disclosure of the documents would therefore seriously undermine the decision making-process of the Council.

The General Secretariat of the Council has also looked into the possibility of releasing parts of the documents.³ However, as the exception to the right of access applies to their entire content, the General Secretariat is unable to give partial access.

Having examined the context in which the abovementioned documents were drafted and the current state of play on these matters, on balance the General Secretariat of the Council could not identify any evidence suggesting an overriding public interest in their disclosure.

As a consequence, the General Secretariat of the Council has to refuse access to these documents.⁴

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.⁵

Yours sincerely,

Fernando FLORINDO

³ Article 4(6) of Regulation (EC) No 1049/2001.

⁴ Article 4(3), first subparagraph, - in absence of any evidence of an overriding public interest in release - of Regulation (EC) No 1049/2001.

⁵ 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.

[Email sent to access@consilium.europa.eu on 4 May 2021 - 11:35]

From: **DELETED**

Sent: Tuesday, May 4, 2021 11:35 AM

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: Internal review of access to documents request - CBCR Documents

Dear TRANSPARENCY Access to documents (COMM),

I thank you for the letter detailing the reasons why you believe these documents contain information which, at this moment, should not be made public.

I would like to ask you to review this decision on the following grounds:

1. After the Council agreed on a negotiation mandate, at this stage when trilogue negotiations are being held, each of the three parties' stance on this matter should be public and transparent;
2. Recent reports of internal, non-official and unsigned documents circulating as an attempt to influence the outcome of the trilogues has brought severe and justified suspicion regarding the democratic mandate of all positions.

Therefore, full transparency at this stage, where the democratic legitimacy of the process has been shaken is absolutely necessary.

Yours sincerely,

DELETED
