



Council of the
European Union

Brussels, 12 May 2021
(OR. en)

8680/21

INF 137
API 77

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 20/c/01/21

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 1 March 2021 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 22 March 2021 (Annex 2);
- a message sent by the applicant on 2 April 2021¹ (Annex 3)
- the confirmatory application dated 10 May 2021 (Annex 4).

¹ Due to a technical issue, this message was not received by the Transparency service. The GSC became aware of its existence on 10 May 2021.

[E-mail message sent to access@consilium.europa.eu on 1 March 2021 - 15:39]

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 documents, which contain the following information:

1) All correspondence (emails, calls, minutes of meetings) between 1.10.2017 and 31.12.2017 between the council legal service unit JUR2 and those working in the Finnish and Estonian government (emails ending in mmm.fi or mfa.ee)

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, 22 March 2021

DELETED

Email: **DELETED**

Ref. 21/0532-mj/vk

Request made on: 01.03.2021

Dear **DELETED**,

Thank you for your request for access to *"All correspondence (emails, calls, minutes of meetings) between 1.10.2017 and 31.12.2017 between the council legal service unit JUR2 and those working in the Finnish and Estonian government (emails ending in mmm.fi or mfa.ee)".²*

Following your request, the General Secretariat of the Council (GSC) has identified 9 emails as corresponding to the scope of that request. Those emails have been exchanged between the representative from the Council Legal Service and representatives of the Estonian government. No emails were identified between the representative of the Council Legal Service and representatives of the Finnish government. Furthermore, no records of calls or minutes of meetings have been identified.

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).

As for the content of those emails, they regard discussions of legal and technical issues that arose in the framework of the legislative procedure that led to the adoption of the Regulation (EU) No 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (hereafter, "the LULUCF Regulation").

These emails qualify as "legal advice" in the meaning of Article 4(2), second indent of Regulation No 1049/2001. They express preliminary legal opinions and were necessary for the smooth functioning of the legislative decision-making process that led to the adoption of the LULUCF Regulation. Besides, the legality of this Regulation has been under review by the General Court in the framework of the Case [T-330/18](#) (Order of 8 May 2019, Carvalho and others v Parliament and Council, T-330/18, EU:T:2019:324). However, the General Court order is currently under appeal before the Court of justice (Carvalho and others v Parliament and Council, [C-565/19 P](#)). Hence, the matter is still the subject of ongoing judicial proceedings.

Therefore, access to those emails falls within the exception related to the protection of judicial proceedings and legal advice as foreseen by Article 4(2), second indent of Regulation No 1049/2001 (see, as for emails exchanged in the framework of a legislative procedure, Judgment of the General Court of 15 September 2016, Herbert Smith Freehills v Council, [T-710/14](#), EU:T:2016:494; and, as for exchanges in the frame of another kind of decision-making process, see Judgments of 7 February 2018, Access Info Europe v Commission, [T-851/16](#), EU:T:2018:69, paragraph 94, and [T-852/16](#), EU:T:2018:71, paragraph 88).

The GSC recognises the public interest in knowing the reasoning of the Council Legal Service in respect of a specific issue related to a legislative file. The GSC however also underlines that the interest in a public debate on legislative proposals does not automatically override the protection of legal advice in all cases. Rather, the GSC is called upon to carefully balance the public interest in having access to the requested documents against the need to protect the interest invoked. It is also reiterated that the preliminary legal views covered by the requested emails were not submitted for discussions in the Council or its preparatory bodies as they do not constitute final, official advice.

On account of the particularly sensitive nature of the legal advice issued by emails and covering legal questions currently under judicial review by the Court of Justice, and taking into account also the nature of the requested documents, the Council concludes that in the specific case at hand, the public interest does not outweigh the interest in protecting the judicial proceedings and legal advice concerned under Article 4(2), second indent, of Regulation No 1049/2001.

You can ask the Council to review this position within 15 working days of receiving this reply (confirmatory application).³

Yours sincerely,

Fernando FLORINDO

³ 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.

[E-mail message sent to access@consilium.europa.eu on 2 April 2021 - 14:52]⁴

Dear Council of the European Union,

Please pass this on to the person who reviews confirmatory applications.

I am filing the following confirmatory application with regards to my access to documents request 'LULUCF delegated act'.

I do not accept that this request is particularly in sensitive nature. The LULUCF regulation is an accounting regulation that sets rules for how carbon dioxide is accounted in land and forests and the legal advice provided should therefore have nothing particularly sensitive in nature, unless of course there was underhand advice being provided.

The context in which I request this information is extremely serious and has implications for the EU's reputation as a climate leader. Against the spirit of the regulation, and to the significant dismay of fellow Member States who have issued a letter on record, the Council Legal Service agreed that Finland should be allowed to compensate for carbon dioxide emissions from deforestation under Article 13. This has caused public outcry in Finland <https://yle.fi/uutiset/3-11827740>. This harms the EU's ability to be able to fight against global deforestation, which is one of the EU's key environmental campaigns at the present moment, with a forthcoming regulation to limit deforestation in supply chains. It is crucial that we have access to these emails so we are able to rule out that the Council Legal Service worked with the Estonian Presidency to find solutions that would be accepted by Finland and that would be possible to challenge later, as is currently the case. This is a matter of utmost importance for the reputation of the council legal service.

Furthermore, the court case referred to bears no relation the LULUCF delegated act. It is a very general case which is entirely unrelated to the requested information.

A full history of my request and all correspondence is available on the Internet at this address: **DELETED**

Yours faithfully,

DELETED

⁴ Due to a technical issue, this message was not received by the Transparency service

[E-mail message sent to access@consilium.europa.eu on 10 May 2021 - 13:34]

Please pass this on to the person who reviews confirmatory applications.

I am filing the following confirmatory application with regards to my access to documents request 'LULUCF delegated act'.

I sent an email on the 2nd April requesting that my access to document request be reconsidered given the importance of this information to be in the public domain. Response to this email is therefore long overdue. There is a suspicion of misconduct on the part of the Council Legal Service and it is important that, for their own reputation, they are able to prove that no underhand dealings were had with either the Estonian or the Finnish government. The content of the suspicion - facilitating deforestation in Finland - is of utmost importance to citizens at this present moment in time and it is therefore crucial that the Council Legal Service shares the content of the emails it sent and received from the Estonian and Finnish governments to clarify that there was nothing underhand.

A full history of my request and all correspondence is available on the Internet at this address:

DELETED

Yours faithfully,

DELETED
