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|  | Brussels, 21 November 2016 |
| Mr Rejo ZengerEmail: ask+request-3347-904ae8df@asktheeu.org |
| Ref. 16/2007-ld/ws/mfRequest made on: 06.10.2016Deadline extension: 27.10.2016 |
| Dear Mr Zenger, |

Thank you for your request for access to documents of the Council of the European Union.[[1]](#footnote-1)

Please note that the questionnaire on the Encryption of Data which was sent by the Presidency to Delegations on 20 September 2016, was drafted following a discussion in the context of the fight against crime over lunch during the informal meeting of the Justice ministers in Bratislava on 8 July 2016. No further preparatory documents had been prepared between this discussion and the issuing of the questionnaire.

As regards the replies of Member States to this questionnaire, the General Secretariat of the Council is still in the process of collecting these replies*.*

So far 25 Member States have returned the completed questionnaire. Considering that not all replies have been received, no analysis has been prepared so far.

After consultation, 11 Member States (Denmark, Germany, Estonia, Croatia, Hungary, Italy, Latvia, Poland, Finland, Sweden and the United Kingdom) have agreed to fully disclose their replies which you will find attached.

The Czech Republic has agreed to grant partial access to its reply. It considers that the public release of the replies to questions 6 to 10 containing information on procedures, possible deficiencies or week points of the police in the course of investigation of the cybercrime and cyber related crime could facilitate committing a criminal offence, avoiding of detection of a criminal offence or avoiding of criminal liability.

Full disclosure of the document would therefore undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse full access to this document.[[2]](#footnote-2)

Belgium, Bulgaria, Spain, Malta, Portugal and France refuse to grant public access to their replies to the questionnaire for similar reasons i.e. hindering investigating authorities in their fight against crime using encrypted data.

Disclosure of the documents would therefore undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse access to these documents.²

The consultation process of the other Member States on access to their replies to the questionnaire, is ongoing and we will inform you as soon as more replies are received.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).[[3]](#footnote-3)

Yours sincerely,

Fernando PAULINO PEREIRA

Enclosures

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). [↑](#footnote-ref-1)
2. Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001 [↑](#footnote-ref-2)
3. 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. [↑](#footnote-ref-3)