



SGS18/03096

Council of the European Union
General Secretariat

Directorate-General Communication and Information
The Director-General

Brussels, 28 -03- 2018

Peter Teffer
EUobserver
Rue Montoyer 18B
1000 Brussels
Belgium

Subject: your confirmatory application

Dear Sir,

Please find enclosed the reply from the Council to the confirmatory application you introduced on 19 February 2018 as well as documents 14707/1/17 REV 1 and 14707/17 COR 1 to which the Council decided to grant access.

Please also note that the other documents that you had requested (i.e. 12965/17, 14707/17 and 15509/17) are now fully available to the public.

Yours sincerely,

Reijo KEMPPINEN

Enclosures

**REPLY ADOPTED BY THE COUNCIL ON 27 March 2018
TO CONFIRMATORY APPLICATION 05/c/01/18,
made by email on 19 February 2018,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents 14707/17 COR 1 and 14707/1/17 REV 1**

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43) and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. On 20 December 2017, the applicant requested access to the following documents :

- ST 12965 2017 INIT
- ST 14707 2017 INIT
- ST 14707 2017 COR 1
- ST 14707 2017 REV 1
- ST 15509 2017 INIT

Document **12965/17** is a Note of 24 October 2017 from the General Secretariat of the Council to Delegations on the *Proposal for a directive of the European Parliament and of the Council amending Directive 2010/31/EU on the energy performance of buildings*. It concerns the preparation for the trilogue.

Document **14707/17** is a Note of 27 November 2017 on the same proposal. It contains a mandate for the second trilogue.

Document **14707/17 COR 1** is a corrigendum to document 14707/17.

Document **14707/1/17 REV 1** is a revised version of the abovementioned note dated 8 December 2017.

Document **15509/17** is a Note of 13 December 2017 on the same proposal. It concerns the preparation for the third trilogy.

2. In its reply of 9 February 2018, the General Secretariat granted a partial access to documents 12965/17, 14707/17 and 15509/17 and denied access to documents 14707/17 COR 1 and 14707/1/17 REV 1 pursuant to the first subparagraph of Article 4(3) (protection of the institution's decision-making process) of Regulation 1049/2001 on public access to documents.
 3. On 19 February 2018, the applicant submitted a confirmatory application concerning documents 14707/17 COR 1 and 14707/1/17 REV 1. He indicated that he doubted that disclosure of these documents would seriously undermine the decision-making process and he argued that there is an overriding public interest to make the documents public.
 4. The Council has carefully considered the confirmatory application. It has re-assessed the request for access in full consideration of the principles underlying Regulation (EC) No 1049/2001, the aim of ensuring the widest possible public access to documents and the fact that wider access should be granted to documents in cases where the institutions are acting in their legislative capacity.
 5. In carrying out its assessment, the Council has taken account of the current stage of the negotiations and the state of play in the legislative procedure concerned and has come to the conclusion that - given the current state of play of the file - full public access could now be granted to the requested documents.
 6. The Council notes, however, that the present positive decision is based on the facts of the concrete confirmatory application concerned, and under no circumstances it can constitute a precedent for the future, since each application shall be assessed and judged on its own merit, pursuant to the established practice of the Council.
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