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|  | Brussels, 10 December 2018 |
| Mr Kieran CollinsEmail: ask+request-6068-d2bbaf45@asktheeu.org |
| Ref. 18/2083-em/mfRequest made on: 30.10.2018Deadline extension: 22.11.2018 |
| Dear Mr Collins*,* |

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

Please find attached a partially accessible version of document **ST 13593/18**.[[2]](#footnote-2) However, I regret to inform you that full access cannot be given for the reasons set out below.

Document ST 13593/18, dated 25th October 2018, comprises an opinion of the Council Legal Service, on the compatibility with the EU Treaties of the proposal for a Regulation of the European Parliament and of the Council on the protection of the Union´s budget in case of generalised deficiencies as regards the rule of law in the Member States. The requested opinion contains legal advice.

The decision-making process in question is currently ongoing and the Council has just started debating the proposal. The issues analysed in the opinion are complex and form an important part of the on-going discussions. Moreover, the legal issues dealt with by the requested document are controversial and the different actors involved in this legislative procedure have expressed divergent positions. As a consequence, the ongoing discussions are very sensitive.

For these reasons, disclosure of the requested document would adversely affect the negotiations by impeding internal discussions of the Council on the proposal and would carry hence the real and genuine risk compromising the capacity of the institutions to reach an agreement on the dossier. In addition, should the opinion be released, third parties may attempt to influence or exert pressure on the policy choices to be made in the decision making process in question. Disclosure of the requested document would thus undermine the decision-making process. As a consequence, the General secretariat has to refuse full access to the document[[3]](#footnote-3).

Moreover, in view of its subject-matter, disclosure of the advice and the issues with which it deals would undermine the protection of the financial and economic policy of the Union[[4]](#footnote-4). In fact, the disclosure of the requested opinion would increase the difficulties in finding an agreement on an instrument aimed at strengthening the protection of the EU budget.

It is also to be noted that the legal advice covered by this opinion deals with issues which are critical elements in the negotiations, broad in scope and contentious*.* Since the measures introduced by the proposal would have a direct impact to the allocation of funds to the Member States, there is a reasonably foreseeable risk of litigation that will certainly concern the issues touched upon in the requested opinion. The legal advice is therefore particularly sensitive.

Under these circumstances, disclosure of the requested document would undermine the protection of legal advice. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences. Therefore, the General Secretariat of the Council has to refuse full disclosure of the document also for this reason[[5]](#footnote-5).

As regards the existence of an overriding public interest in disclosure, the General Secretariat considers that, on balance, the principle of transparency which underlies Regulation (EC) No 1049/2001 would not, in the present case, prevail over the above indicated interests so as to justify full disclosure of the requested document.

In the view of the foregoing, the General Secretariat of the Council is unable to grant you full access to this document. However, in accordance with Article 4(6) of Regulation (EC) No. 1049/2001, you may have access to paragraphs 1 to 8, with the exception of the second sentence of paragraph 1.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).[[6]](#footnote-6)

Yours sincerely,

Paulo VIDAL

Enclosure

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(6) of Regulation (EC) No 1049/2001. [↑](#footnote-ref-2)
3. Article 4(3), first indent, of Regulation (EC) No. 1049/2001. [↑](#footnote-ref-3)
4. Article 4(1)(a), fourth indent, of Regulation (EC) No. 1049/2001. [↑](#footnote-ref-4)
5. Article 4(2), second indent, of Regulation (EC) No. 1049/2001. [↑](#footnote-ref-5)
6. 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-6)