



Council of the European Union
General Secretariat

Directorate-General Communication and Information - COMM
The Director-General

Brussels, 13 December 2021

SGS 21/5182

Mr Nicholas Lee

Email: Nicholas Lee <ask+request-9977-e9ecdbfc@asktheeu.org>

Subject: Your Confirmatory Application 40/c/01/21

Dear Mr Lee,

Please find enclosed the reply from the Council to the confirmatory application you introduced on 10 November 2021 which was registered by our service on 11 November 2021, as well as document WK 10814/21 to which the Council decided to grant partial access.

If you wish to challenge this decision, you may do so pursuant to Article 8(1) of Regulation (EC) No 1049/2001 by instituting proceedings against the Council of the European Union before the General Court of the European Union¹ or by making a complaint to the European Ombudsman².

Yours sincerely,

Reijo KEMPPINEN

Enclosures: 2

¹ For deadlines and other procedural requirements concerning the institution of proceedings at the General Court, please refer to the following page: http://curia.europa.eu/jcms/jcms/Jo2_7040/en/

² Any complaint to the Ombudsman must be made within two years of receiving the institution's final position on the matter. For more information, please refer to the [Ombudsman's website](#).

**DRAFT REPLY ADOPTED BY THE COUNCIL ON 12 DECEMBER 2021
TO CONFIRMATORY APPLICATION 40/c/01/21,
made by email on 10 November 2021
pursuant to Article 7(2) of Regulation (EC) No 1049/2001**

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 27 September 2021, the applicant requested access to the document WK 10814/2021. Document WK 10814/2021 is a working document from the General Secretariat of the Council to delegations concerning the Foreign Account Tax Compliance Act (FATCA). It contains a letter dated 8 September 2021 from the US Department of the Treasury addressed to the Slovenian Presidency of the Council concerning the state of play of the implementation of FATCA on an intergovernmental basis between the US and EU Member States in order to take stock of the situation and to consider the experience gained in relation to FATCA.
2. In its reply of 10 November 2021, the General Secretariat denied access to this document pursuant to Article 4(1)(a), third indent (protection of the international relations), and to Article 4(3), first subparagraph (protection of the institution's decision-making process), of Regulation (EC) No 1049/2001.
3. On 10 November 2021, the applicant submitted a confirmatory application against that decision.

4. The Council has reassessed, in full consideration of the principle of transparency underlying Regulation No 1049/2001, whether public access can be provided to the document withheld in the General Secretariat's reply. It has in particular carried out consultations of the third country concerned. In that context, the Council took also into account the information that has already been made public on this matter.
 5. The Council has come to the conclusion that public access can be granted at present to the requested document, with the exception of personal data of natural persons, including signatures, which are protected under Article 4(1)(b) of the Regulation (EC) No 1049/2001.
 6. The Council notes that the present positive decision is based on an individual analysis of the content of the requested document and the specific circumstances of the present case; it does under no circumstances 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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