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|  | Brussels, 22 October 2015 |
| Mr Michael Bauer  Email: ask+request-226-7777c64d@asktheeu.org | |
| Ref. 15/2160-mj/dm  Request made on: 10.09.2015  Extended on : 01.10.2015 | |
| Dear Mr Bauer, | |

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 **11747/15**.[[2]](#footnote-2) However, I regret to inform you that full access cannot be given for the reasons set out below.

Document **11747/15** is a Presidency Note of 8 September 2015 to the Working Party on General Matters and Evaluations on the situation in the Member States following the 'Data Retention Judgment".

By its judgment of 8 April 2014, the Court of Justice declared the Data Retention Directive invalid. Given that the Court has not limited the temporal effect of its judgment, the invalidity takes effect *ab initio*, i.e. from the date the Directive took effect in 2006.

The Working Party on General Matters and Evaluations discussed the state of play after this judgment at its meeting of 15 September 2015 with a view to preparing a discussion at the Justice and Home Affairs Council in December 2015. The issue is highly politically sensitive.

This issue is thus still under discussion within the preparatory bodies of the Council.

The General Secretariat has weighed your interest in being informed of progress in this area against the general interest that progress be made in an area that is still the subject of negotiations.

It considers that, at this stage, full disclosure of this document which contains opinions for internal use as part of deliberations and preliminary consultations within the Council would be premature in that it could impede the proper conduct of the negotiations and compromise the conclusion of an agreement on this subject. As there is no evidence suggesting an overriding public interest to warrant full disclosure of the document in question, the General Secretariat has concluded that protection of the decision-making process outweighs the public interest in disclosure. Accordingly, pursuant to Article 4(3), first subparagraph, of the Regulation (protection of the Council's decision-making process), the General Secretariat is unable to accede to your request for full access.

However, as abovementioned, pursuant to Article 4(6) of the Regulation, you may have access to those parts of the document which are not covered by this exception.

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

Yours sincerely,

Jakob THOMSEN

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 7(2) of Regulation (EC) No 1049/2001.

   Council documents on confirmatory applications are made available to the public. According 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)