



**COUNCIL OF
THE EUROPEAN UNION**

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"I/A" ITEM NOTE

from : Working Party on Information
to : Coreper (part 2)/Council

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Subject : Public access to documents
- Confirmatory application made by Mr Martin OTTMANN (03/c/01/08)

Delegations will find enclosed a draft reply from the Council, as it stands after examination by the Working Party on Information at its meeting on 21 February 2008, to the confirmatory application made by Mr Martin OTTMANN (03/c/01/08).

The Permanent Representatives Committee is accordingly asked to suggest that the Council, at its next meeting, record its agreement to the draft reply annexed to this document, as an "A" item.

The Annex is available in English only.

DRAFT
REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION 03/c/01/08
made by Mr Martin OTTMANN to the Council by e-mail on 12 February 2008,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for access to documents

The Council has carefully considered this confirmatory application under Regulation (EC) No 1049/2001 (OJ L 145 of 31.5.2001, p. 43) and Annex II to the Council's Rules of Procedure (Council Decision 2006/683/EC, Euratom - OJ L 285 of 16.10.2006, p. 47).

1. The applicant refers to document COREU CFSP/SEC/1126/06, classified RESTREINT UE, which contains a report of the EU-Troika meeting with the US authorities held on 3 May 2006.
2. By letter dated 30 January 2008, the General Secretariat refused to grant access to this document pursuant to Article 4(1)(a), third indent, and Article 4(3) of the Regulation (protection of the public interest with regard to international relations and protection of the Institution's decision-making process).
3. Whilst referring in his confirmatory application to Articles 19 and 42 of the Charter of Fundamental Rights of the European Union, Article 6 of the Treaty of Lisbon and to Recital (2) and Article 2 of Regulation 1049/2001, the applicant essentially claims that there "*exists an immense public interest which outweighs by far any possible negative effects resulting from the disclosure of these EU/US discussions*", and that the citizens have full right to be granted access to the requested document. Maintaining secrecy on this document would, in the applicant's view, entail refusal to provide "*complete transparency*" and "*covering up possible rights violations*".

4. The Council has thoroughly re-examined the document concerned and carried out consultations with the department of its General Secretariat in charge of this matter, and has come to the following conclusion.
5. Document COREU CFSP/SEC/1126/06 contains the report of the EU-US meeting held in the framework of the transatlantic dialogue, during which sensitive issues in the field of the fight against terrorism were discussed. It reports in detail on the positions taken by both sides. It contains an analysis and comments on this area of co-operation and an assessment on how the issues have so far been addressed by the two parties.
6. Given the sensitive content of the document, the Council considers that its disclosure would be detrimental to the good functioning of the relations between the EU and the US. It would hinder the diplomatic efforts being made to find constructive solutions to the outstanding issues in sensitive political areas. If the United States had reason to believe that the positions taken by it in meetings not open to the public may be made public unilaterally by the EU side, it would be difficult, if not impossible, to address controversial issues between the two sides in this format. This would not only breach the mutual confidence in the future negotiations but also, in turn, make it considerably more difficult to reach agreement between the two sides.
7. The Charter of Fundamental Rights of the European Union and the Treaty of Lisbon have not yet entered into force. The current framework is Article 255 of the EC Treaty, on which Regulation 1049/2001 - hence also Article 4(1)(a) thereof - are based.
8. The Council has also looked into the possibility of disclosing parts of the document pursuant to Article 4(6) of the Regulation. However, as the information contained in the document forms an inseparable whole, partial access cannot be granted.
9. In the light of the above, access to the document is denied in its entirety pursuant to Article 4(1)(a), third indent, of the Regulation (protection of the public interest as regards international relations).