



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 March 2008

7203/08

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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 06/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 18 March 2008, to confirmatory application 06/c/01/08.

The Danish and Swedish delegations indicated that they would vote against the draft reply. Furthermore, the Swedish delegation has made the following statement: "The release of document 7344/05 would not seriously undermine the Council's decision-making process, why the document should be released in its entirety."

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 , with the Danish and Swedish delegations voting against ;
- decide to publish the result of the vote.

The Annex is available in English only.

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REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION 06/c/01/08
made to the Council by e-mail on 29 February 2008,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document 7344/05

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 7344/05 of 15 March 2005 which contains a proposal from the Belgian delegation related to the tasks of the Standing Committee on Internal Security (COSI) in the framework of the negotiations on the Constitutional Treaty.
2. By letter dated 29 February 2008, the General Secretariat refused to grant public access to this document in its entirety pursuant to Article 4(3) of the Regulation (protection of the Institution's decision-making process), following consultation with its relevant department. The delegation of the Member State concerned clarified that the positions contained in the document have not been made public by it.
3. The applicant is of the opinion that release of the requested document would not have an impact on negotiations *"relating to the implementation of a different text"*, since the document relates to *"the old Constitutional Treaty that many governments and Council officials claim bears no relation to the present Lisbon Treaty"*. Furthermore, the applicant argues that it is in the public interest to be informed on *"prior and future discussions"* on the implementation of the Lisbon Treaty, which is currently being ratified in the Member States.

4. The Council has re-examined the document concerned and carried out new consultations with the department of its General Secretariat in charge of this matter.
5. Having recognised the need for greater coordination of the operational cooperation in matters of EU internal security, the European Convention proposed including in the Constitutional Treaty the set-up of a "Committee on Internal Security" ("COSI" - see Article III-261 of the Constitutional Treaty). Following discussions in the informal JHA Ministers' meeting of 28 January 2005, the Presidency submitted in February 2005 a discussion paper to continue the preparation of the implementation, the structuring and the functioning of the future Standing Committee on Internal Security (COSI).
6. Document 7344/05 contains a proposal from the Belgian delegation explaining in detail this delegation's view on the various tasks of COSI and its position within the work structure of the Council.
7. Taking into account that the Constitutional Treaty would not enter into force, it was decided in March 2006 not to set up the afore-mentioned Committee on Internal Security. However, if the Lisbon Treaty is ratified, Article 61D of the Treaty on the Functioning of the European Union would provide for the creation of a similar committee.
8. As specified by the General Secretariat in its initial reply, document 7344/05 contains opinions for internal use as part of deliberations and preliminary consultations within the Council. The content of document 7344/05, if released, could be misused or misinterpreted since the position of the Belgian delegation mentioned in that document does not reflect the present view of that delegation on this matter.

9. The European Council establishes in point 4 of its conclusions from December 2007 a single forum to discuss the implementation of the Lisbon Treaty under the authority of the Presidency. These discussions have already started and are currently under way within the Council. Disclosure of the past position of one Member State on an issue the practical modalities of which are currently under discussion and which is relevant for the implementation of the Lisbon Treaty would endanger the proper conduct of negotiations within the Council.
10. As there is no evidence suggesting an overriding public interest to warrant disclosure of the document in question, the Council has concluded that the protection of the decision-making process outweighs the public interest in disclosure. Accordingly, pursuant to Article 4(3), first paragraph, of the Regulation (protection of the Council's decision-making process), public access to the above-mentioned document cannot be granted.
11. The Council has also examined the content of document 7344/05 with a view to assessing whether the applicant might be granted partial access to it. However, it found that the above-mentioned exception applies to its entire content.
