



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 December 2008

16718/08

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"I/A" ITEM NOTE

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

No. prev. doc.: 16717/1/08 REV 1

Subject : Public access to documents
- Confirmatory application 22/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 16 December 2008, to confirmatory application 22/c/01/08.

The Swedish delegation indicated that it would vote against the draft reply, and made the following statement:

"Disclosure of documents 14778/08 and 14863/08 would not undermine the protection of the public interest as regards international relations. Consequently, the documents should be released in their entirety.

The Swedish delegation agrees to grant total release to document 14789/08 + ADD 1."

A majority of delegations agreed to publish the result of the vote.

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 Swedish delegation voting against,
- decide to publish the result of the vote.

The Annex is available in English only.

DRAFT

REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION 22/c/01/08
made by e-mail on 1 December 2008 to the Council,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents

The Council has 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) and has come to the following conclusion:

1. The applicant refers to documents 14778/08 and 14863/08 (both RESTREINT UE). Document 14778/08 is a Presidency note and contains a proposal for a Council Decision for the establishment of the Community position in the International Commission for the Conservation of Atlantic Tunas (ICCAT). Document 14863/08 is a note containing the final Council Decision on the same subject. Furthermore, the applicant refers to the minutes of the 2900th meeting of the Council (Agriculture and Fisheries) of 27 and 28 October 2008.
2. In its reply to the applicant dated 18 November 2008, the General Secretariat refused to grant access to documents 14778/08 and 14863/08 pursuant to Article 4(1)(a) of the Regulation (protection of the public interest with regard to international relations) as well as Article 4(3) of the Regulation (protection of the Council's decision-making process).

As to the minutes of the Agriculture and Fisheries Council meeting of 27 and 28 October 2008, the General Secretariat indicated in the reply that these minutes have not been drafted yet. However, the press release (doc. 14784/08) related to that Council meeting was sent to the applicant.

3. The Council notes that, in her confirmatory request, the applicant argues that the reason given for declining access to documents 14778/08 and 14863/08 is no longer valid, as the 16th ICCAT meeting has now come to a close.

Regarding the minutes of the Agriculture and Fisheries Council meeting of 27 and 28 October 2008, the Council notes that the applicant renews the request and asks that the Council make the detailed minutes available to her as soon as they have been circulated. According to the applicant, the only reason given in declining access to this document was that of the document not having been drafted. The applicant would like to be informed of the likely date on which this will have been achieved.

4. The Council has thoroughly examined documents 14778/08 and 14863/08 and carried out internal consultations within its General Secretariat to ascertain the applicability of the above-mentioned exceptions to the retained documents. Following these consultations, the Council has come to the conclusion set out below.
5. The European Community is a Contracting Party to the International Convention for the Conservation of Atlantic Tunas, which established an International Commission for the Conservation of Atlantic Tunas (ICCAT). Documents 14778/08 and 14863/08 contain, respectively, a proposal for a Council Decision for the establishment of the Community position in the ICCAT and the final Council Decision. This Decision shall be evaluated and where appropriate revised by the time of the ICCAT annual meeting in 2013 at the latest. The Community position in the ICCAT has thus not been adopted for only one round of meetings but will be valid for several years. The Council can therefore not agree with the applicant's argument concerning the invalidity of the reason given for declining access to these documents.
6. In the light of the above, the Council considers that full release of documents 14778/08 and 14863/08 to the public would compromise the EU's relationship with other parties within the ICCAT. It would also weaken the EU's position in the future ICCAT negotiations insofar as this would enable third countries to assess the measure of the EU's willingness to compromise. For these reasons, full access to documents 14778/08 and 14863/08 must be denied on the basis of Article 4(1)(a), third indent of the Regulation (protection of the public interest as regards international relations).

7. However, taking into account that the Council adopted the Decision for the establishment of the Community position in the ICCAT at its General Affairs and External Relations session of 10 November 2008, the Council has come to the conclusion that partial access may be granted to documents 14778/08 and 14863/08 pursuant to Article 4(6) of the Regulation. The Council has therefore decided to grant the applicant access to pages 1-3 of document 14778/08 and pages 1-3 of document 14863/08 which, in the Council's view, are no longer covered by any of the exceptions of Regulation 1049/2001. The applicant can thus have access to documents 14778/08 EXT 1 and 14863/08 EXT 1, the partially declassified versions of the documents under scrutiny.

8. As regards the minutes of the 2900th meeting of the Council (Agriculture and Fisheries) of 27 and 28 October 2008, the applicant may have full access to document 14789/08 which contains the draft minutes drawn up by the General Secretariat on 11 December 2008. The applicant may also have access to the addendum to the minutes in question, document 14789/08 ADD 1.
