



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 December 2008

16932/08

**INF 279
API 97
JUR 563**

"I/A" ITEM NOTE

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

No. prev. doc.: 16931/08

Subject : Public access to documents
- Confirmatory application 24/c/03/08

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 24/c/03/08.

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

"Apart from the name mentioned in the third sentence of the third paragraph on page 2 the document should be released in accordance with Article 4(6)."

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 24/c/03/08
made by e-mail on 4 December 2008 to the Council,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document 14483/06

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 document 14483/06 (RESTREINT UE), an "I" Item note from the Presidency to the Permanent Representatives Committee (Part 2) concerning the approval of a reply to a letter of the European Parliament on transmission of information to the Temporary Committee on the alleged use of European Countries by the CIA for the transportation and illegal detention of prisoners.
2. In its reply to the applicant dated 19 November 2008, the General Secretariat refused to grant access to this document pursuant to Article 4(1)(a) of the Regulation (protection of the public interest with regard to international relations).
3. On 4 December 2008, the applicant submitted his confirmatory application. Referring to recital (2) and Articles 2, 3 and 4 of Regulation 1049/2001, the applicant requests the Council to review its position and grant at least partial access to document 14483/06 with regard to *"parts that cover information on the "CIA rendition program" and related activities"*.
4. Having thoroughly examined the requested document and carried out internal consultations with the relevant department of its General Secretariat, the Council has come to the conclusion set out below.

5. Document 14483/06 is an "I" item note from the Presidency to the Permanent Representatives Committee (Part 2). It was drawn up in response to a letter of the European Parliament on transmission of information to the Temporary Committee on the alleged use of European Countries by the CIA for the transportation and illegal detention of prisoners. The document is classified "RESTREINT UE", which means that its unauthorised disclosure could be disadvantageous to the interests of the European Union or one or more of its Member States.

In view of the sensitive content of the document, its disclosure would be detrimental to the good functioning of the relations between the EU and the US. It would hinder the diplomatic efforts continuously being made in order to find constructive solutions to issues in areas of the highest political importance, including the areas of human rights law and international humanitarian law.

6. Against this background, the Council confirms the General Secretariat's decision to refuse access to the requested document, pursuant to Article 4 (1)(a), third indent, of the Regulation (protection of the public interest with regard to international relations).

The Council has also looked into the possibility of granting partial access to the above-mentioned document as foreseen in Article 4(6) of the Regulation, but concluded that this is impossible since the content of the document forms an inseparable whole.
