



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 30 November 2009**

**15472/09**

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**"I/A" ITEM NOTE**

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

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No. prev. doc.: 15471/09

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Subject : Public access to documents  
- Confirmatory application No 27/c/01/09

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Delegations will find enclosed a draft reply from the Council to confirmatory application No 27/c/01/09, as it stands after examination by the Working Party on Information at its meeting on 23 November 2009.

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 No 27/c/01/09**  
**made by e-mail on 4 November 2009,**  
**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**  
**for public access to document 13867/09 (RESTREINT UE)**

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 13867/09 (RESTREINT UE), a note from the Presidency to the "Friends of Presidency" Group which contains a draft position of the EU Member States on the Criminal provisions in Chapter 2 of the Anti-counterfeiting Trade Agreement (ACTA).
2. In its reply dated 4 November 2009, the General Secretariat refused public access to this document pursuant to Article 4(3), first subparagraph, of the Regulation (protection of the Council's decision-making process).
3. The Council notes that the applicant asks the institution to reconsider its position. The applicant also argues that documents on ACTA are of public interest. Furthermore, the applicant claims that some of the provisions relating to ACTA drafts are accessible in the internet.
4. Having thoroughly examined the requested document and carried out internal consultations, the Council has come to the conclusion set out below.

5. On 20 November 2007, the Commission submitted a Recommendation to the Council to authorise the Commission to open negotiations of a plurilateral anti-counterfeiting trade agreement, in other words to join the ACTA negotiating process. A revised version of the Recommendation was submitted to the Council by the Commission on 29 February 2008 and adopted by the Council on 14 April 2008. Formal negotiations with the other ACTA partners were launched in June 2008. The EU's objective with ACTA partners is to conclude a new plurilateral treaty improving global standards for the enforcement of intellectual property rights (IPR), to more effectively combat trade in counterfeit and pirated goods.

The negotiations are still ongoing and there is, at this stage, no agreed text. So far, six rounds of negotiations haven't taken place, the latest one in Seoul on 4-6 November 2009. Participants in the meeting agreed that the next meeting would be hosted by Mexico in January 2010. Participants also reaffirmed their commitment to continue their work with the aim of concluding the agreement as soon as possible in 2010.

6. As regards the applicant's claim that some of the provisions relating to ACTA drafts are accessible in the internet, it is recalled that there is no agreed text on ACTA. Papers or drafts possibly circulating on the internet or in the press have thus no official status and do not necessarily represent the views of all negotiating parties. Furthermore, it should be noted that documents containing draft provisions for ACTA have never been made public by the Council in accordance with the rules laid down in Regulation 1049/2001 and in Annex II to the Council's Rules of Procedure.
7. Document 13867/09 contains detailed information on the EU's position in the framework of the negotiations on ACTA. The Council considers that disclosure of this text would reveal the EU's strategic objectives to be achieved in these negotiations. It would thereby compromise the overall conduct of the on-going negotiations and thus be prejudicial to the EU's interest in the efficient conduct of such negotiations.
8. Full public access to document 13867/09 is therefore denied pursuant to Article 4(1)(a), third indent, of the Regulation (protection of the public interest as regards international relations).

9. With regard to the applicant's arguments relating to the public interest in disclosure, it is recalled that Article 4(1) (a) of the Regulation does not allow the Council to balance the protection of international relations against other interests.
  
10. The Council has also examined, pursuant to Article 4(6) of the Regulation, the possibility of granting partial access to the document and decided that partial access may be given to page 1 of the document which is not covered by the above-mentioned exceptions.

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