



Bruselas, 8 de mayo de 2018  
(OR. en)

5170/18

LIMITE

API 8  
INF 8

**NOTA PUNTO «I/A»**

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De:	Secretaría General del Consejo
A:	Comité de Representantes Permanentes/Consejo
N.º doc. prec.:	5168/18
Asunto:	Acceso del público a los documentos - Solicitud confirmatoria n.º 02/c/01/18

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Adjunto se remite a las Delegaciones un proyecto de respuesta del Consejo a la solicitud confirmatoria n.º 02/c/01/18, aprobado mediante consulta escrita que concluyó el 4 de mayo de 2018, con el voto en contra de Bélgica, Bulgaria, Croacia, Eslovenia, España, Finlandia, los Países Bajos y Suecia.

Se han formulado las siguientes declaraciones:

*Los Países Bajos no están de acuerdo con el razonamiento que figura en el proyecto de respuesta. NL cree que el razonamiento no proporciona suficientes explicaciones acerca de cómo la posibilidad de que existan presiones externas podría debilitar gravemente el proceso de toma de decisiones del Consejo. Por consiguiente, en este caso concreto NL es de la opinión de que se puede ofrecer acceso completo a todos los documentos. Además, NL cree que, en cualquier caso, resultaría adecuado remitir al reciente caso De Capitani en el proyecto de respuesta. Las implicaciones de la sentencia se deberían debatir de forma horizontal y en mayor profundidad en un futuro.*

**Suecia** no está de acuerdo con el razonamiento que figura en el proyecto de respuesta. SE cree que el razonamiento no proporciona suficientes explicaciones acerca de cómo la posibilidad de que existan presiones externas podría debilitar gravemente el proceso de toma de decisiones del Consejo. Por consiguiente, en este caso concreto SE es de la opinión de que se puede ofrecer acceso completo a todos los documentos. Además, SE cree que, en cualquier caso, resultaría adecuado remitir al reciente caso De Capitani en el proyecto de respuesta. Las implicaciones de la sentencia se deberían debatir de forma horizontal y en mayor profundidad en un futuro.

**Finlandia** no está de acuerdo con el razonamiento que figura en el proyecto de respuesta. FI cree que el razonamiento no proporciona suficientes explicaciones acerca de cómo la posibilidad de que existan presiones externas podría debilitar gravemente el proceso de toma de decisiones del Consejo. Por consiguiente, en este caso concreto FI es de la opinión de que se puede ofrecer acceso completo a todos los documentos. Además, FI cree que, en cualquier caso, resultaría adecuado remitir al reciente caso De Capitani en el proyecto de respuesta. Las implicaciones de la sentencia se deberían debatir de forma horizontal y en mayor profundidad en un futuro.

**Dinamarca** cree que resultaría adecuado remitir al reciente caso De Capitani en el proyecto de respuesta. Las implicaciones de la sentencia se deberían debatir de forma horizontal y en mayor profundidad en un futuro.

Las delegaciones han acordado hacer público el resultado de la votación.

Así pues, se ruega al Comité de Representantes Permanentes que proponga al Consejo que, en su próxima sesión:

- haga constar, como punto «A», su acuerdo con el proyecto de respuesta que figura en el anexo del presente documento
- decida hacer público el resultado de la votación.

El anexo solo existe en inglés.

REPLY ADOPTED BY THE COUNCIL ON xx APRIL 2018

TO CONFIRMATORY APPLICATION 02/c/01/18,

made by email on 9 January 2018,

pursuant to Article 7(2) of Regulation (EC) No 1049/2001,

for public access to documents 12438/17 INIT, 14308/17 INIT,

14316/17 INIT and 14317/17 INIT

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43) (hereafter referred to as "Regulation No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. On 17 November 2017, the applicant submitted a request for access to following documents:

a) Document **12438/17** which is a note of 25 September 2017 from the General Secretariat of the Council to Delegations on Proposal for a Regulation of the European Parliament and of the Council on establishing a multi-annual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks and repealing Council Regulation (EC) 676/2007 and Council Regulation (EC) 1342/2008 - Mandate for negotiations with the European Parliament.

b) Document **14308/17** which is a note of 14 November 2017 from the General Secretariat of the Council to Delegations on Proposal for a Regulation of the European Parliament and of the Council on establishing a multi-annual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks and repealing Council Regulation (EC) 676/2007 and Council Regulation (EC) 1342/2008.

c) Document **14316/17** which is a note of 15 November 2017 from the General Secretariat of the Council to Delegations on Regulation on Atlantic and North Sea TACs and Quotas for 2018 Non-paper on European seabass.

d) Document **14317/17** which is a note of 16 November 2017 from the General Secretariat of the Council to Delegations on Regulation on Atlantic and North Sea TACs and Quotas for 2018 Non-paper with updates.

2. In its reply dated 09 January 2018, the General Secretariat of the Council granted partial access to document **12438/17** and refused access to documents **14308/17**, **14316/17** and **14317/17** pursuant to Article 4.(3), first paragraph, of Regulation No 1049/2001, since the full disclosure of document **12438/17** and the disclosure of the other documents would seriously undermine the decision making process of the Council.
3. In the confirmatory application dated 09 January 2018 and registered on the same day, the applicant asks the Council to reconsider this position. The applicant claims that the arguments of the Council stating that the above-mentioned issues are still at the stage of discussion, that releasing the documents would affect the negotiating process and diminish the chances of Council reaching an agreement and that disclosure of the documents would undermine the decision-making process of the Council are not valid.
4. The Council has carefully considered the confirmatory application. Having thoroughly examined the documents concerned by the request and carried out renewed consultations, it has re-assessed the request for access in full consideration of the principles underlying Regulation No 1049/2001, the aim of ensuring the widest possible public access to documents.
5. In so doing the Council has carefully scrutinized the content of the documents, having due regard to the current state of play of negotiations related to the issues and taking into account that the Regulation fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non Union waters was adopted by the Council on 23 January 2018.<sup>1</sup>

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<sup>1</sup> OJ L 27, 31.1.2018

## **General Context**

6. The requested documents are part of the Council's follow-up to the Commission proposal (COM 2016/493 final<sup>2</sup>) for a Regulation of the European Parliament and of the Council on establishing a multi-annual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks and repealing Council Regulation (EC) 676/2007 and Council Regulation (EC) 1342/2008 (documents **12438/17** and **14308/17**) and to the Commission proposal (COM 2017/645final<sup>3</sup>) for a Council Regulation fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non Union waters (documents **14316/17** and **14317/17**). The draft legislation is intended to provide a stable framework of rules in particular to guide future Council decisions on fishing opportunities under Article 43(3) TFEU in the North Sea.
7. The issues related to the setting of the fishing opportunities for the main commercial fish stocks in the Atlantic, North Sea and adjacent areas are highly complex, involving vessels from several coastal Member and Non-Member States. The main objectives of the proposals are to ensure the exploitation of sea stocks according to principles of maximum sustainable yield (MSY) and of the ecosystem approach to fisheries management, while taking duly into account the environmental protection as well as making sure that the agreement benefits the economic interests of fishermen and coastal communities. These questions are subject to a difference regime when it comes to the EU competence to regulate the domain. While multi-annual plans are adopted by means of codecision under TFEU Article 43.2, fishing opportunities remain the sole competence of the Council under Article 43(3).

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<sup>2</sup> Document 11636/16

<sup>3</sup> Document 13780/17

### **Specific context for document 12438/17**

8. The European Commission submitted its aforementioned proposal COM 2016/493 final on 3 August 2016. The European Parliament examined the proposal and approved its amendments on 14 September 2017. The position of the European Parliament document is public.<sup>4</sup> The Council adopted its general approach on 25 April 2017, which is public and can be found in doc 7339/17 PECHE 106 CODEC 399. Following the adoption of the respective positions on the Commission's proposal, the Council and the European Parliament have entered inter-institutional negotiations (so called "trilogues") with a view of finding an agreement on a common text.
9. Document **12438/17** of 25 September 2017 provides Delegations with a 4-column document containing the provisions of the Commission proposal, the amendments of the European Parliament, the Council's General approach as well as the Presidency's suggestions for positions in view of the, at that time, upcoming negotiations with the European Parliament.

### **The exception concerning the protection of the institution's decision making process for document 12438/17**

10. Although a provisional political agreement was reached with the European Parliament at the last trilogue in December 2017, the technical work to produce the finalised updated text is still ongoing. From Council side the informal agreement requires confirmation by COREPER before subsequently the European Parliament can approve at first reading.
11. While the Council acknowledges the importance to allow members of the public to provide an useful input to the democratic decision-making, notably by exercising the participatory rights set out in Article 11 TUE and the relevant secondary legislation, it also stresses that the Treaties are based on a model of representative democracy which requires that the co-legislators are put in the condition to take decisions effectively and in line with their democratic mandate.

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<sup>4</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0357+0+DOC+PDF+V0//EN>

This may in particular require that the decision makers are allowed an adequate space of reflection and negotiation which is not subject to the kind of pressure that can be exercised by organised groups which are able to mobilise resources and exert considerable pressure on behalf of very specific interests.

12. In the present case, the provisional agreement was reached after very long and difficult negotiations and the final proposal remains extremely sensitive, given the relevant economic and environmental interests involved. Disclosure of the Council's negotiating position at this stage could lead stakeholders, namely representatives of the fishing industry that could be potentially affected by the options under discussion as well as organisations active in the environmental and animal welfare domains, to intervene by attempting to put the Presidency, Member States and the European Parliament under additional pressure so to influence the ongoing decision making process.
13. Full disclosure of document **12438/17** would therefore impede the proper conduct of the final discussions and compromise the successful conclusion of the informal agreement.
14. Full disclosure of this document would therefore seriously undermine the decision making-process of the Council.

#### **Context for document 14308/17**

15. Document **14308/17** of 14 November 2017, invites Delegations to examine Presidency compromise orientations on Article 1 (Subject-matter and scope), Article 2 (Definitions), Article 9 (Conservation measures), Article 10 (Fishing opportunities), Article 11 (Landing obligation) and Article XX2 (Management of stocks of common interest to the Union and third countries) of the above-mentioned proposal in view of the Working Party meetings of 15 November 2017 and 17 November 2017.

**The exception concerning the protection of the institution's decision making process for document 14308/17**

16. The document contains drafting suggestions and options on the issues identified in point 15. Granting access to the detail of the discussion, in particular such as on the scope, definitions, etc. might lead to misperceptions, while they by no means could be considered as representative for the position of the Council at this stage. The proposal remains extremely sensitive because of the economic and environmental interests involved. Its disclosure at this stage could lead stakeholders representing fishery industries as well as environmental and animal interests that could be potentially affected by the options under discussion, to intervene by attempting to put the Presidency, Member States and the European Parliament under additional pressure to influence the ongoing decision-making process.
17. Considering the high interest related to these issues, and as explained under point 10, disclosure of the requested document could lead to undue external pressure, notably by vested interests that are . This would affect the serenity of the final internal deliberations and the global decision making process.
18. Disclosure of document **14308/17** would therefore impede the proper conduct of the discussions and compromise the successful conclusion of the agreement.
19. Disclosure of this document would therefore seriously undermine the decision making-process of the Council.

### **Partial access to document 14308/17**

20. Having regard to the above, the Council has also reassessed the possibility to grant access to certain parts of document **14308/17** which do not fall under the exception of Article 4(3), first subparagraph, as indicated above.
21. From this reassessment it appears to be impossible that considering the homogenous nature of the document and without disclosing information that would undermine the protection of the institution's decisions making process, parts of the documents could be disclosed.

### **The overriding public interest in disclosing document 14308/17 and fully disclosing document 12438/17**

22. The Council has considered whether it exists an overriding public interest in disclosure of document 14308/17 and full disclosure of document 12438/17. In that regard it is important to stress that the initial negotiating mandates of both the Parliament and the Council are public and therefore the general public has already a good understanding of their respective positions. In the light of the information already available to the public and of the fact that the requested information will be made available at the conclusion of the decision making process, the balancing between the interests at stake is in the present case in favour of protecting the effectiveness of the Council's decision-making process.. The Council therefore concludes that the public interest in having immediate access to the requested documents is outweighed in the present case by the need to protect the effectiveness of the institution's ongoing decision-making capacity.
23. The Council recalls that, in accordance with the rules laid down in Article 11(6) of Annex II to the Council's Rules of Procedure, these documents, and any other documents relating to the proposed act, will, in principle, be made available to the public after adoption of the legislative act in question.<sup>5</sup>

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<sup>5</sup> Pursuant to Article 11(6) of Annex II to the Council Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35) and unless their content is covered by Article 4(1), (2) or (3), second subparagraph, of Regulation (EC) No 1049/2001.

### **Context for documents 14316/17 and 14317/17**

24. Both documents are Commission's non-papers containing updates to the Commission proposal COM(2017) 645 to be discussed at the Working Party on Internal and External Fisheries Policy of 17 November 2017. Whereas document **14316/17** of 14 November 2017 contains amendments regarding European Seabass, **14317/17** of 16 November 2017 contains amendments regarding certain total allowable catches (TACs).

### **The exception concerning the protection of the institution's decision making process for documents 14316/17 and 14317/17**

25. Disclosure of these documents has not been possible at the moment of the initial request of the applicant since the agreement reached on the file was only a political agreement and required formal adoption by Council. For the same reasons as explained under points 10 and 15, disclosure of the documents at that stage could have seriously undermined the decision making process since stakeholders still had the possibility to intervene in a file that has not been concluded.
26. The Council notes that it has meanwhile formally adopted Regulation (Council Regulation (EU) 2018/120 of 23 January 2018 (L 27 2018 page(s) 1-168) fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non Union waters.

27. In light of this consideration, the Council has come to the conclusion that also taking into account the provisions of Art. 11.6 of Annex II of the Council Rules of Procedure<sup>6</sup>, full access to documents **14316/17** and **14317/17** can be granted.
28. The Council points out that this positive decision is made on the basis of an individual analysis of the content of the requested documents; it does not in any way prejudice any potential future assessment of other documents concerning the same issue.

### **Conclusion**

29. For the above-mentioned reasons, the Council concludes that:

Pursuant to Article 4.3 (first subparagraph) of Regulation 1049/2001, no access can be granted to document **14308/17**.

Pursuant to Article 4.3 (first subparagraph) and to Article 4.6.of Regulation 1049/2001, partial access can be granted to document **12438/17**, the applicant can have access to the full document except to the 4th column of the Annex: "Draft Council Mandate".

Full access can be granted to documents **14316/17** and **14317/17** .

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<sup>6</sup> JO L 325 du 11.12.2009, p. 36