



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 May 2009

9783/09

**INF 133
API 68
JUR 224**

COVER NOTE

from : General Secretariat of the Council
to : Working Party on Information
Subject : Public access to documents
- Confirmatory application 13/c/01/09 made by Mr Bruno WATERFIELD

Delegations will find attached:

- A request for access to documents sent to the General Secretariat of the Council on 23 March 2009 and registered on the same day (Annex 1).
- A reply from the General Secretariat of the Council dated 8 May 2009 (Annex 2).
- A confirmatory application dated 8 May 2009 and registered on the same day (Annex 3).

[E-mail message sent on 23.03.2009 - 09:42]

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application

This electronic form has been submitted in EN

Title/Gender: Mr - Mr

Last Name: Waterfield

First Name: Bruno

E-Mail: bruno.waterfield@telegraph.co.uk

Occupation: Journalist

On behalf of: The Daily Telegraph

Address:

Telephone:

Mobilephone:

Fax:

Requested document(s): Document Number: 7344/05

Title: Standing Committee on Internal Security (COSI) – Constitutional Treaty, art.III-261

Content: (!) N/A

Interinstitutional File:

Subject Matter: JAI 92

Document Category: NOTE

Originator: the Belgian delegation

Addressee:

Document Date: 15-03-2005

Date of Meeting:

Archive Date: 17-03-2005

Document Language: EN

Document Number: 5657/1/09

REV 1

Title: Presidency proposal to set up an informal virtual discussion forum for EU officials dealing with specific implementation, application and enforcement of restrictive measures

Content: (!) N/A

Interinstitutional File:

Subject Matter: PESC 109

RELEX 66

FIN 26

JAI 36

Document Category: NOTE
Originator: Presidency
Addressee: Delegations
Document Date: 18-03-2009
Date of Meeting:
Archive Date: 19-03-2009
Document Language: EN
Language: EN

Document Number: 7812/09
Title: Outcome of Proceedings EUMC 18 March 2009
Content: (!) N/A
Interinstitutional File:
Subject Matter: COSDP 253
Document Category:
Originator:
Addressee:
Document Date: 19-03-2009
Date of Meeting:
Archive Date: 22-03-2009
Document Language: EN

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French



ANNEX 2

COUNCIL OF THE EUROPEAN UNION

GENERAL SECRETARIAT

*Directorate-General F
Press
Communication
Protocol*

*Transparency
- Access to Documents*

RUE DE LA LOI, 175
B - 1048 BRUSSELS
Tel: (32 2) 281 67 10
Fax: (32 2) 281 63 61
E-MAIL:

access@consilium.europa.eu

Brussels, 8 May 2009

Mr Bruno Waterfield

**e-mail:
bruno.waterfield@telegraph.co.uk**

09/0648-jp/jj

Dear Mr Waterfield,

Your request of 23 March 2009 for access to documents 7344/05, 5657/1/09 REV 1 and 7812/09 has been registered by the "Access to Documents" unit. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (Official Journal L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2006/683/EC, Euratom, Official Journal L 285, 16.10.2006, p. 47). On 16 April 2009, the time-limit for replying to your application was extended by 15 working days. Having examined the request, the General Secretariat has come to the following conclusion:

Document **7344/05** is a note from the Belgian delegation containing a proposal related to the tasks of the Standing Committee on Internal Security (COSI) in the framework of the negotiations on the Constitutional Treaty. The note is a follow-up to the proposal made during the negotiations on the European Convention to include the set-up of a Committee on Internal Security in the Constitutional Treaty. After it became clear that the Constitutional Treaty would not enter into force, it was decided in March 2006 not to set up such a Committee. If, however, the Lisbon Treaty is ratified by all Member States, the creation of a similar committee would be foreseen in the Treaty on the Functioning of the European Union.

The discussions on the implementation of the Lisbon Treaty have already started and are currently under way within the Council. Disclosure of document 7344/05 which contains an opinion for internal use as part of deliberations and preliminary consultations within the Council, could impede the proper conduct of future negotiations on this important issue within the Council.

As there is no evidence suggesting an overriding public interest to warrant disclosure of the document in question, the General Secretariat has concluded that protection of the decision-making process outweighs the public interest in disclosure. Accordingly, pursuant to Article 4(3), first subparagraph, of the Regulation (protection of the Council's decision-making process), the General Secretariat is unable to accede to your request for access.

As the exception to the principle of transparency applies to the content of the entire document, the General Secretariat is unable to grant you partial access as provided for in Article 4(6) of the Regulation.

Document **5657/1/09 REV 1** is a note from the Presidency to Delegations concerning a Presidency proposal to set up an informal virtual discussion forum for EU officials dealing with specific implementation, application and enforcement of restrictive measures.

You may have access to this document with the exception of certain parts still under discussion to which the General Secretariat is unable to grant you access pursuant to Article 4(3), first subparagraph, of the Regulation (protection of the Council's decision-making process).

Document **7812/09** is a note from the European Union Military Committee Working Group (EUMCWG) and contains the Outcome of Proceedings of the EUMC meeting on 18 March 2009. It is classified as "RESTREINT UE", which means that the unauthorised disclosure of the information it contains could be disadvantageous to the interests of the European Union or of one or more of its Member States.

This document contains internal operational information disclosure of which could undermine the protection of public interest as regards defence and military matters. Accordingly, pursuant to Article 4(1)(a) of the Regulation (protection of the public interest with regard to defence and military matters), the General Secretariat is unable to accede to grant you full access to this document.

However, pursuant to Article 4(6) of the Regulation, you may have access to those parts of the document which are not covered by this exception. You will find them in document 7812/09 EXT 1.

According to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply ¹.

Yours sincerely,

For the General Secretariat

Ramón Jiménez Fraile

Enclosures

¹ Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.

[Confirmatory application sent by e-mail on 8 May 2009 - 15:50]

Dear Mr Fraile,

I am submitting a confirmatory application for document 7344/05. I am happy for this application to be made public in the Council's register of documents.

I do not accept that papers on such an important aspect of the implementation of the Lisbon Treaty should be a private matter for Coreper.

You say that: “discussions on the implementation of the Lisbon Treaty have already started and are currently under way within the Council.” What discussions? In what fora?

As part of this application, I would also like to ask why a paper on the creation of COSI, from the Slovenian presidency, is not on the Council documents register, despite it forming the basis for Coreper and other Council discussions?

Your argument that disclosure “could impede the proper conduct of future negotiations” has neglected to recognise public interest in the constitution of such bodies, which after all will be an organ of public authority.

The development of the EU’s internal security policy is too important to be restricted to tiny cabals of civil servants.

Yours sincerely,

Bruno Waterfield
Brussels Correspondent
The Daily Telegraph