



Council of the  
European Union

Brussels, 5 July 2016  
(OR. en)

10547/16

INF 119  
API 75

**NOTE**

---

From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 16/c/01/16

---

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 3 May 2016 and registered on 4 May 2016 ([Annex 1](#));
- replies from the General Secretariat of the Council dated 31 May and 20 June 2016 ([Annex 2](#));
- confirmatory application dated 21 June 2016 and registered on the same day ([Annex 3](#)).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 3 May 2016 - 23:01 using the electronic form available in the Register application]

From: **DELETED**

Sent: Tuesday, May 03, 2016 11:01 PM

To: SECRETARIAT DGF Access

Subject: Electronic Request for Access

Title/Gender: **DELETED**

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation: Other

On behalf of:

Address: **DELETED**

Telephone: **DELETED**

Mobile:

Fax:

Requested document(s): Part 1

o Minutes of the meeting of the Working Party on International Environmental Issues on 19 December 2009

o Minutes of the meeting of the Working Party on International Environmental Issues on 2 February 2010

o Minutes of the meeting of the Working Party on International Environmental Issues on 12 February 2010

o Minutes of the meeting of the Working Party on International Environmental Issues on 18 February 2010

o Minutes of the meeting of the Working Party on International Environmental Issues on 23 February 2010

## Part 2

- o Minutes of the 2310th meeting of Coreper I on 5 March 2010 + referenced document 6820/10
- o Minutes of the 2311th meeting of Coreper I on 8 March 2010 + referenced document 6820/1/10

## Part 3

- o Documents drawn up by the Council/its services/its preparatory between 13-25 March 2010 relating to the EU daily coordination meetings during the CITES CoP 15
- o Documents drawn up by the Council/its services/its preparatory between 13-25 March 2010 referencing any of the following documents
  - o Doc "COP15 Prop. 3" - Ursus maritimus (Polar bear)
  - o Doc "COP15 Prop. 4" - Loxodonta africana (African elephant)
  - o Doc "COP15 Prop. 5" - Loxodonta africana (African elephant)
  - o Doc "COP15 Doc. 44.1"
  - o Doc "COP15 Doc. 44.1A"
  - o Doc "COP15 Doc. 44.2"
  - o Doc "COP15 Prop. 19" - Thunnus thynnus (Atlantic bluefin tuna)
  - o Doc "COP15 Doc. 52"



**Council of the European Union**

General Secretariat

Directorate-General Communication and Document Management

Directorate Document Management

Transparency and Access to Documents Unit

*Head of Unit*

Brussels, 31 May 2016

**DELETED**

Email: **DELETED**

Ref. 16/1110-mjb/jj

Request made on: 03.05.2016

Registered on: 04.05.2016

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.<sup>1</sup>

Your request concerns the following:

1. Minutes of the meetings of the Working Party on International Environmental Issues held on 19 December 2009, 2 February 2010, 12 February 2010, 18 February 2010 and 23 February 2010.
2. Minutes of 2310th Coreper meeting of 5 March 2010 and of the 2311th Coreper meeting on 8 March 2010 as well as documents 6820/10 and 6820/1/10 REV 1.

---

<sup>1</sup> The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ 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 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

3. Documents drawn up by the Council/its services/its preparatory between 13-25 March 2010 relating to the EU daily coordination meetings during the CITES CoP 15

4. Documents drawn up by the Council/its services/its preparatory between 13-25 March 2010 referencing any of the following documents : "COP15 Prop. 3" - Ursus maritimus (Polar bear), "COP15 Prop. 4" - Loxodonta africana (African elephant), "COP15 Prop. 5" - Loxodonta africana (African elephant), "COP15 Doc. 44.1", "COP15 Doc. 44.1A", "COP15 Doc. 44.2", "COP15 Prop. 19" - Thunnus thynnus (Atlantic bluefin tuna) and "COP15 Doc. 52".

#### Part 1 of your request

We would like to inform you that the Working Party on International Environmental Issues does not establish minutes of its meetings.

The meeting of the Working Party scheduled for 17 December 2009 ( and not 19 December) was cancelled.

Regarding the meetings of the Working Party held on 2 February and 12 February 2010, two internal notes were drafted.

Regarding the meetings held on 18 February and 23 February 2010 no internal notes or minutes were drafted.

I regret to inform you that access to these internal notes related to the meetings held on 2 February and 12 February 2010 cannot be given for the reasons set out below.

These internal notes refer to issues which are still being discussed within the preparatory bodies of the Council related to international negotiations. Release of these internal notes would affect the EU's position at international level and severely hamper ongoing and future discussions on this issue.

Disclosure of these documents would therefore undermine the protection of the public interest as regards international relations and the Council's decision-making process. As a consequence, the General Secretariat has to refuse access to these documents.<sup>2</sup>

---

<sup>2</sup> Article 4(1)(a), third indent, and Art. 4(3) of Regulation (EC) No 1049/2001.

Having examined the context in which the document was drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in its disclosure.

We have also looked into the possibility of releasing parts of the document.<sup>3</sup> However, as the exception to the right of access applies to its entire content, the General Secretariat is unable to give partial access.

#### Regarding part 2 of your request

Please find attached documents **7059/10** and **7249/10** which contain the summary records of the 2310th meeting and 2311th meeting of the Committee of Permanent Representatives.

Please find attached partially accessible versions of documents **6820/10** and **6820/1/10 REV 1**.<sup>4</sup> However, I regret to inform you that full access cannot be given for the reasons set out below.

Documents **6820/10** and **6820/1/10 REV 1** are notes from the General Secretariat to the Permanent Representatives Committee on the "*Proposal for a Council decision establishing the position to be adopted on the European Union's behalf with regard to certain proposals submitted to the 15th meeting of the Conference of the Parties (CoP 15) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Doha, Qatar, 13–25 March 2010*".

These documents contain information on positions taken during the discussions held on 2010 which are still relevant for the preparation of the next meeting of the CITES Convention, which will take place from 24 September to 5 October 2016 in Johannesburg. These issues are still under discussion within the Council and at international level.

For the Council to reach a common position on these negotiations, its Member States hold initial consultations and exploratory talks. To reveal the contents of such talks before a common position has been reached would interfere with the negotiations and could jeopardise the conclusion of an agreement within the Council. Full disclosure of these documents would therefore seriously undermine the Council's decision-making process. As a consequence, the General Secretariat has to refuse full access to these documents.<sup>5</sup>

---

<sup>3</sup> Article 4(6) of Regulation (EC) No 1049/2001.

<sup>4</sup> Article 4(6) of Regulation (EC) No 1049/2001.

<sup>5</sup> Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

Having examined the context in which the documents were drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in full disclosure of the document in question.

In addition, full disclosure of the information contained in the document would also have a negative impact on the European Union's position at international level. Should its internal views and negotiation strategy be made public while negotiations are still ongoing, the position of the Union in such international negotiations would be seriously weakened. Full disclosure of these documents would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse full access for this reason as well.<sup>6</sup>

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).<sup>7</sup>

Regarding parts 3 and 4 of your request, the General Secretariat of the Council is still working on the identification of the requested documents. You will receive a reply as soon as possible.

Yours sincerely,

Jakob THOMSEN

Enclosures

---

<sup>6</sup> Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

<sup>7</sup> Article 7(2) of Regulation (EC) No 1049/2001.

Council documents on confirmatory applications are made available to the public. According to data protection rules at EU level (Regulation (EC) No 45/2001), if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent.

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 21 June 2016 - 12:53]

From: **DELETED**

Sent: Tuesday, June 21, 2016 12:53 PM

To: SECRETARIAT DGF Access

Subject: Re: Ref. 16/1110-mjb/jj - request for review

Dear Sir/Madam,

Please find attached my request for review of your position regarding my request for access to documents, ref. 16/1110-mjb/jj

Kindest regards,

**DELETED**



Council of the European Union  
General Secretariat  
*Directorate-General Communication and Document Management*  
*Directorate Document Management*  
*Transparency and Access to Documents Unit*

**attn. Mr. Jakob THOMSON**

Rue de la Loi/Wetstraat 175  
1048 Bruxelles, Belgium

via Email to [access@consilium.europa.eu](mailto:access@consilium.europa.eu)

**DELETED**

### **Review of decision to (partly) refuse access to documents**

Ref. 16/1110-mjb/jj

Dear Mr. Thomson,

Having received your response to my request for access to documents (Ref. 16/1110-mjb/jj) on 31 May 2016, I hereby ask the Council to review its decision to (partly) refuse access to several of the requested documents. In doing so, I kindly ask to consider my arguments set out below:

### **Regarding part 1 of my request**

Whilst appreciating your mention of the existence of internal notes drafted in the WPIEI meetings held on 2 February and 12 February 2010, I do not understand how access to these internal notes could adversely undermine the protection of the public interest as regards international relations.

The issues which form the contents of these internal notes were discussed in a specific context, which was the EU preparations for the 15<sup>th</sup> Conference of the Parties (CoP) to CITES. This CoP was held and closed in 2010, I therefore doubt that disclosure of the notes relating to the preparation process for this past event '*would affect the EU's position at international level and severely hamper ongoing and future discussions on this issue*', as you state in your reply. I would

like to remind you of the CJEU's respective case-law finding that '*the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical*'.<sup>8</sup>

I therefore ask you to reconsider your position and grant access to the identified documents. In case you find yourself confirming your initial position, I ask you to clearly demonstrate how disclosure of these d

ocuments would 'specifically and actually undermine'<sup>9</sup> the protection of the public interest as regards international relations.

### **Regarding part 2 of my request**

I appreciate your willingness to grant full access to documents 7059/10 and 7249/10. However, access to documents 6820/10 and 6820/1/10 REV 1 was partly refused, in essence the names of Member States taking a specific position in the discussions were deleted. According to your reply, these discussions are still relevant for the preparation of the next meeting of the CITES Convention (CoP) in 2016, disclosure could therefore adversely undermine the protection of the public interest as regards international relations.

The Council is clearly obliged by law to uphold grounds for refusals (exceptions for access to documents) only for the period of time during which the protection is justified.<sup>10</sup> As you clearly state yourself, the respective documents are notes on the '*Proposal for a Council decision establishing the position to be adopted on the European Union's behalf with regard to certain proposals submitted to the 15th meeting of the Conference of the Parties (CoP 15) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Doha, Qatar, 13–25 March 2010*'. Given that the CITES CoP15 was held and closed in 2010, I am not convinced that access to documents outlining the discussions held in the run-up to this past event are still able to adversely undermine the protection of the public interest as regards international relations. I therefore believe the Council has no reason to still uphold its refusal for access to these documents on these grounds.

---

<sup>8</sup> CJEU, Case C-576/12 P, Jurašinović v Council, para 45.

<sup>9</sup> CJEU, Case C-350/12 P, Council v Sophie in 't Veld, para 54.

<sup>10</sup> Art 6(7) Access to Documents Regulation 1049/2001.

Your counterargument in this regard is that the 2010 discussions are still relevant for the preparation of this year's CITES CoP. By the Council's reasoning, this would mean that after a COP, none of the documents relating to EU preparation discussions could be accessed on the pure possibility that at some point in the future, the issue discussed in the past could come up again. This clearly fails to put into practice the CJEU's case-law holding that 'the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical'.<sup>11</sup>

Indeed, whether a specific issue will be point of discussion in this international forum in the future can only be assessed once the Parties' proposals for amendments of CITES annexes are published, i.e. in the up-run to the next CoP. Looking at the context of my request, there are no proposals for amendments of CITES annexes of any of the parties relating to Atlantic bluefin tuna and Polar bear. Consequently, these species are not topic of the 2016 CITES CoP, disclosure of the mentioned documents in that respect can therefore not risk to specifically and actually undermine the protection of the public interest as regards international relations.

I therefore ask you to reconsider your position and grant access to the identified parts of the documents. In case you find yourself confirming your initial position, I ask you to clearly demonstrate how disclosure of these documents would be 'risk specifically and actually undermining'<sup>12</sup> the protection of the public interest as regards international relations.

Kindest regards,

**DELETED**

---

---

<sup>11</sup> CJEU, Case C-576/12 P, Jurašinović v Council, para 45

<sup>12</sup> CJEU, Case C-350/12 P, Council v Sophie in 't Veld, para 54.