



Council of the
European Union

Brussels, 20 September 2017
(OR. en)

12318/17

INF 158
API 112

NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Public access to documents
- Confirmatory application No 21/c/01/17

Delegations will find attached the:

- request for access to documents sent to the General Secretariat of the Council on 17 August 2017 and registered on the same day ([Annex 1](#));
- reply from the General Secretariat of the Council dated 6 September 2017 ([Annex 2](#));
- confirmatory application dated 16 September 2017 and registered on 18 September 2017 ([Annex 3](#))

[E-mail message sent to access@consilium.europa.eu on 17 August 2017 - 14:22 using the electronic form available in the Register application]:

From: **DELETED**
Sent: Thursday, August 17, 2017 2:22 PM
To: SECRETARIAT DGF Access
Subject: Electronic Request for Access

Title/Gender: **DELETED**
Family Name: **DELETED**
First Name: **DELETED**
E-Mail: **DELETED**

Occupation:

On behalf of:

Address:

Telephone:

Mobile:

Fax:

Requested document(s): ST 11582 2017 INIT - Working Party on Internal and External Fisheries

Policy: I. FAO Fish Trade Subcommittee, Korea II. Ex post Evaluation of the EFF 2007 - 2013



Council of the European Union

General Secretariat

Directorate-General Communication and Information

Knowledge Management

Transparency

Head of Unit

Brussels, 6 September 2017

DELETED

Email: **DELETED**

Ref. 17/1788-rh/ns

Request made on: 17.08.2017

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.¹

I regret to inform you that access to document **11582/17 INIT** cannot be given for the reasons set out below.

Document **11582/17 INIT** of 1 August 2017 which is an outcome of proceedings from the GSC to Delegations on Working Party on *Internal and External Fisheries Policy: I. FAO Fish Trade Subcommittee, Korea II. Ex post Evaluation of the EFF 2007 - 2013*.

These negotiations are still in progress. Release of the information contained in the above mentioned document would have a negative impact on the relations of the European Union with third countries. 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.

¹ 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).

Disclosure of the document would therefore undermine the protection of the public interest as regards international relations. As a consequence, the General Secretariat has to refuse access to this document.²

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).³

Yours sincerely,

Ramón CHISMOL IBÁÑEZ

² Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001.

³ Article 7(2) of Regulation (EC) No 1049/2001.

Council documents on confirmatory applications are made available to the public. Pursuant 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 on 16 September 2017 -22:32]:

From: **DELETED**

Sent: Saturday, September 16, 2017 10:32 PM

To: SECRETARIAT DGF Access

Subject: Re: Confirmatory application Ref. 17/1788-rh/ns

Dear Mr CHISMOL IBÁÑEZ, to whom this may concern,

thank you for providing an answer to my request.

As I do not find the answer satisfactory I hereby send you a confirmatory application for the document 11582/17 INIT of 1 August 2017.

Dear Sir/Madam,

I hereby submit a confirmatory application on 17/1788-rh/ns.

The decision provided in English on the initial application was unclear as regards the legal basis for the rejection. If there were to be a rejection under Article 4(3) of Regulation (EC) No 1049/2001, a prior examination of the overriding public interest in disclosure ought to have been carried out.

Failure to give adequate reasons

The assertion regarding a 'negative impact on the relations of the European Union with third countries' does not in itself stand up to scrutiny, and it does not constitute adequate grounds for affirming that 'disclosure of the document would therefore undermine the protection of the public interest as regards international relations.'

There is no reference to any countries whose relations could be endangered by such a disclosure, nor is there any more detailed explanation of the 'negative impact'.

Public, not institutional interest: It is unclear how protecting the purely institutional interest of the European Union may be correlated with the 'public interest', for which the only legal basis is Regulation (EC) No 1049/2001.

Guiding principle: 'as openly as possible': The consideration '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' is less important than the guiding principle of openness in Article 15 of the TFEU. Neither the Treaty nor the legislator in Regulation (EC) No 1049/2001 make any normative statement concerning the strengthening or protection of the negotiating power of the Union and individual institutions. If the European institutions are unable to negotiate with third countries whilst respecting the Treaty principle of optimal openness they should always refrain from engaging in such negotiations on account of their duties under the EU treaties.

No reference to ongoing negotiations: The document refers to the 'ex post evaluation of the EFF 2007 – 2013', so the alleged link to ongoing EU negotiations is not apparent. Evaluations of the EFF dating back more than four years can scarcely be regarded as confidential. It is not clear why the Union wishes to conceal its positions in such a historical review.

No weakening of the mandate: The Member States determine the Union's negotiating mandate in trade-related matters. That mandate is neither changed nor weakened by disclosure of this document.

(Complimentary close)
