



Council of the
European Union

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Brussels, 26 May 2023
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API 97

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 19/c/01/23

Delegations will find attached:

- the initial request for access to documents sent to the General Secretariat of the Council on 11 April 2023 and registered on the same day (Annex 1);
- the first reply from the General Secretariat of the Council dated 24 April (Annex 2);
- the applicant's letter of 24 April 2023 complementing the initial request (Annex 3);
- the second reply from the General Secretariat of the Council dated 3 May 2023 (Annex 4);
- the applicant's letter, submitted on 3 May 2023 (although dated 24 April), complementing further the initial request (Annex 5);
- the third reply from the General Secretariat of the Council dated 23 May 2023 (Annex 6);
- the confirmatory application dated 23 May 2023 and registered on 24 May 2023 (Annex 7).

[E-mail message sent to access@consilium.europa.eu on Tuesday 11 April 2023, 15:50]

From: DELETED

Sent: 11 April 2023 15:50

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: Consilium - Electronic Request for Access to documents [GERMAN]

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Family name DELETED

First name DELETED

E-mail DELETED

Occupation DELETED

Mobile telephone DELETED

Full postal address DELETED

Requested document(s) Minutes of the Lisbon Intergovernmental Conference, December 2007



Council of the European Union

General Secretariat

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit / Transparency

Head of Unit

Brussels, 24 April 2023

DELETED

Email: **DELETED**

Ref. 23/1068-lk/vk

Request made on: 11.04.2023

Dear **DELETED**,

Thank you for your request for access to the minutes of the Lisbon intergovernmental Conference.

The General Secretariat of the Council would like to inform you that Intergovernmental Conferences (IGCs) work as international bodies independent from the Council of the EU, from the European Council or from any other EU institution. Each IGC adopts its own working methods, notably, if and how regularly minutes of meetings are issued or if discussions of a given meeting are summarised in documents submitted at a subsequent meeting.

The General Secretariat of the Council is called upon to provide secretarial support to the IGCs and it is in this capacity that the Archives of the Council hold documents related to such conferences. As a result, IGC documents are not systematically transmitted to the Archives of the Council and, consequently, they cannot be properly processed (that is, identified, organised, indexed, etc.).

Nevertheless, the General Secretariat of the Council has agreed with the Member States of the EU that access to documents found in the Council's Archives that have been inventoried and are related to the Lisbon IGC can be given to members of the public, upon request.

You will find attached the list of documents held by the Archives of the General Secretariat of the Council relating to the Lisbon IGC. You will note that the minutes of the Lisbon IGC are not part of this list. Should you however wish to consult one or more of those documents that do appear on the list, we will be happy to send you copies thereof. Please note that some documents exist only either in English or in French.

Yours sincerely,

Fernando FLORINDO

Enclosure: 1

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U.Z.: 23/1068-lk/vk

DELETED, 24. April 2023

Dear Mr Florindo,

Many thanks for your letter of 24 April 2023 bearing the aforementioned reference, which – although you refer therein explicitly to my request in accordance with the Access Regulation – I take as an invitation to submit further arguments in relation to my initial request, and to which I therefore respond as follows:

At the time of the adoption of Regulation (EC) No 1049/2001 ('the Access Regulation'), Article 255 TEC read as follows:

Article 255

*(1) Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to **European Parliament, Council and Commission** documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.*

(2) General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.

(3) Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.

Since the Treaty of Lisbon, this provision has been included in the TFEU as Article 15, and has since been substantially amended as follows:

Article 15

(ex Article 255 TEC)

*(1) **In order to promote good governance and ensure the participation of civil society**, the Union's institutions, bodies, offices and agencies shall conduct their work **as openly as possible**.*

(2) The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.

*(3) Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of **the Union's institutions, bodies, offices and agencies**, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.*

General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.

Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.

(4) The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

(5) The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph.

It is therefore no longer only the Council, the Commission and the European Parliament, but all of *the Union's institutions, bodies, offices and agencies* that are required to provide access to their documents.

This clear extension of the scope of EU citizens' right of access stems in full from paragraph 1 of the *aforecited provision*, which requires that the abovementioned entities conduct their work as openly as possible, in order to promote good governance, on the one hand, but also to ensure the participation of civil society, on the other.

Both of these factors therefore have a crucial role to play in the interpretation of Article 15(3), first paragraph, TFEU.

My request is for access to the minutes of the Lisbon Intergovernmental Conference (2007). According to your reply, the latter is not an entity in the sense of those cited above. That is incorrect.

The 2007 Lisbon Intergovernmental Conference was not just any intergovernmental conference, but was the conference convened for the purpose of determining amendments to the Treaties that is referred to in Article 48 TEU, as published in 2006, which reads:

Article 48

The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.

If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

It is thus stipulated not only that a favourable opinion from the Council should be a precondition for convening such an intergovernmental conference, but also that the President of the Council must convene it and, finally, that the purpose of the conference is to determine amendments to the Treaties.

The members of the Union therefore agreed here, in a binding (!) manner, that an amendment conference is to be admissible only if the Council has given a favourable opinion, that it is to be convened by a representative of the Union itself and, finally, what the purpose of the conference is to be.

These three parameters, which are enshrined in EU treaty law and thus enshrine this form of intergovernmental conference in the same context, clearly indicate that the conference is an entity which has a tangible affinity with the European Union. This is reflected in the wording of Article 15(3), first paragraph, TFEU, underlined above, which is cited here (by way of comparison) in its French and Dutch versions:

3. Tout citoyen de l'Union et toute personne physique ou morale résidant ou ayant son siège statutaire dans un État membre a un droit d'accès aux documents des **institutions, organes et organismes de l'Union**, quel que soit leur support, sous réserve des principes et des conditions qui seront fixés conformément au présent paragraphe.

3. Iedere burger van de Unie en iedere natuurlijke of rechtspersoon met verblijfplaats of statutaire zetel in een lidstaat heeft recht op toegang tot documenten van de **instellingen, organen en instanties** van de Unie, ongeacht de informatiedrager waarop zij zijn vastgelegd, volgens de beginselen en onder de voorwaarden die overeenkomstig het huidige lid worden bepaald.

The terms highlighted in each instance here in bold also provide sufficient scope for an entity of the type described above as an intergovernmental conference within the meaning of Article 48 TEU (2006 version) to be included by connotation.

The provisions of the Vienna Convention on the Law of Treaties (VCLT), which are fully applicable to the EU Treaties, read as follows, in so far as they are of direct interest here:

Article 31. GENERAL RULE OF INTERPRETATION

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32. SUPPLEMENTARY MEANS OF INTERPRETATION

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) Leaves the meaning ambiguous or obscure; or

(b) Leads to a result which is manifestly absurd or unreasonable.

Neither good governance (by the EU institutions) nor ensuring the participation of civil society (as mentioned in both cases in Article 15(1) TFEU) can be guaranteed without a legitimate interpretation of the Treaties; to carry out such interpretation, however, the preparatory papers and other documents, as referred to in the above-cited Articles 31 et seq. VCLT, are indispensable.

At the time of the 2007 Lisbon Intergovernmental Conference, Article 255(1) TEC did not yet have the broader wording now present in the first subparagraph of Article 15(3) TFEU, which is in force today. However, as discussed above, that does not alter the fact that the provisions of the latter also apply to the documents from the 2007 Lisbon Intergovernmental Conference.

Article 28 VCLT reads as follows:

Article 28. NON-RETROACTIVITY OF TREATIES

*Unless a different **intention appears from the treaty** or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.*

Both the purpose of the right of access, as discussed above, and the conditions for its fulfilment set out above, as well as the wording with which it is enshrined in law, including the third paragraph of Article 15(3) TFEU, highlighted in bold above, are clearly indicative of the intention (which appears from the Treaty!) to apply the right of access to documents from past intergovernmental conferences too.

For the very reason that the Intergovernmental Conference convened under Article 48 TEU (2006 version) – or the first subparagraph of Article 48(3) TEU (2016 version) – and even more so the Convention referred to in the first subparagraph of Article 48(3) TEU (2016 version), are Union entities covered by the first subparagraph of Article 15(3) TFEU, they should have laid down permanent Rules of Procedure as required by the third subparagraph of Article 15(3) TFEU, at least to the extent required by the aforementioned right of access to their documents – including with reference to past meetings of the entity!

It is therefore clear that not only the relevant secondary legislation on the right of access adopted so far is insufficient, but so too are the rules of procedure of both the Intergovernmental Conference and the Convention, as referred to above.

The Court of Justice of the European Union, in flagrant violation of human rights, refuses to follow the strict line of argument put forward to it in T-490/14 and C-52/15 P, according to which, as an former Austrian lawyer, I have the right to plead, at least on my own behalf, before the Courts of the European Union, without using the services of another lawyer. I enclose the relevant pleadings and decisions.

I cannot reasonably be expected to have recourse once again to the ordinary legal procedure, which is so inadequate in this respect. Accordingly, I hereby apply for the following:

The Council should:

1. obtain authorisation from the Member States that participated in the 2007 Lisbon Intergovernmental Conference to make available to me the documents requested (and any annexes thereto); or, in the alternative,
2. suspend its procedure in respect of my right of access in the matter at hand until provisions have been put in place for that purpose in secondary law, the legislative procedure for the adoption of which it may see fit to initiate at this juncture.

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Council of the European Union

General Secretariat

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit / Transparency

Head of Unit

Brussels, 3 May 2023

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Email: **DELETED**

Ref. 23/1068-lk/sr

Request made on: 11.04.2023

Dear **DELETED**,

We thank you for your letter of 24 April 2023. As a complement to our first reply to your initial access request registered as 23/1068, dated 24 April 2023, please find attached the totality of documents in our possession regarding the Lisbon Intergovernmental Conference, i.e. a total of 64 documents in English and 10 documents that are only available in French. These are the documents set out in the list sent to you with our first reply.

The General Secretariat of the Council reiterates that it is not in possession of any other documents pertaining to the above mentioned Intergovernmental Conference.

We will therefore consider your access request as processed and handled with.

Yours sincerely,

Fernando FLORINDO

Enclosures: 74

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U.Z.: 23/1068-lk/vk

DELETED, 24. April 2023

Our ref.: 23/1068

Dear Mr Florindo,

I would like to confirm with thanks the receipt of your letter of 3 May 2023 and the information enclosed.

Since the last sentence in your latest letter is a declaration of knowledge but not a declaration of intent, my initial application of 11 April 2023 has in no way been decisively settled, so I will set out some additional remarks below to complement my initial application.

Possibly, you might want to consider my letter, including my comments of 24 April 2023, as a **confirmatory application**.

Again, the first sentence of Article 15(3) TFEU, as amended, needs to be cited:

*‘Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union’s institutions, bodies, offices and agencies, whatever their medium, **subject to the principles and the conditions to be defined in accordance with this paragraph.**’*

The last part of the sentence, highlighted in bold, is **not** included in Article 42 of the EU Charter of Fundamental Rights (the Charter), which reads as follows:

‘Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.’

This discrepancy must therefore be resolved through interpretation and, to get straight to the point, means that the relevant institutions and bodies of the European Union, or rather the Council which is responsible in this case, must in any event and in direct application of the Treaties comply with the right of access, regardless of whether the relevant secondary law takes sufficient account of this right.

Article 51 of the Charter states the following:

'Article 51

Field of application

*(1) The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. **They shall therefore** respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.*

(2) The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.'

Paragraph 1 makes it clear that the Charter and thus the rights enshrined in it **apply** to the institutions of the Union. It follows, as is only logical, that these rights must be respected by the administration from the outset rather than having to be enforced by the courts of the European Union.

*Therefore (!), we cannot read into the words of the sentence 'in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties', any restriction of these rights, only a clarification that is intrinsic to the system, according to which these powers are to be understood as being subordinate to those rights. This is highlighted by the second paragraph cited, which, conversely, states that the powers **of the Union** are not thereby extended, so it is clear that it refers to the powers dealt with in Articles 4 and 5 TEU and not to the internal powers that the institutions need to function.*

*'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, **which shall have the same legal value as the Treaties.***

*The provisions of the Charter **shall not extend in any way the competences of the Union** as defined in the Treaties.*

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.'

Especially since the abovementioned discrepancy between the first subparagraph of Article 15(3) TFEU and Article 42 of the Charter would otherwise be almost impossible to resolve due to their equal legal status, the repetition in the second subparagraph of the above quotation, according to which the Charter does not extend the competences of **the Union**, must have special significance (also) to the effect that the functional individual competences of the institutions, i.e. their scope of action dependent on EU law, are indeed extended by the Charter where it is a matter of not undermining or denying citizens' fundamental rights by administrative means solely because the secondary legislation is lacking.

Rather, where the individual institutions encounter obstacles to compliance with fundamental rights as a result of such shortcomings in secondary law, they must overcome these obstacles by applying the Treaties, i.e. primary law, directly and in compliance with all the applicable principles of the Union and those common to the Member States – where this allows for compliance with the fundamental right.

Only an outcome of this kind is consistent with the fundamental right enshrined in Article 41 of the Charter, where paragraph 1 reads:

'Article 41

Right to good administration

*Every person has the right to have his or her affairs handled impartially, **fairly** and within a reasonable time by the institutions, bodies, offices and agencies of the Union.'*

Any administration that fails to comply with the fundamental rights of citizens because of a lack of relevant secondary legislation implementing them is not fair; on the contrary it is immoral and desolate¹!

Such principles as those mentioned above, which must of course be **legal** in themselves, do **not** include an ominous deference to relations between states, which only serves to obscure the conditions for law! In addition to those already submitted, please see the following **annexes**:

- points 4.5 and 4.6 of my attached *individual application to the ECHR*, 5744/16, from 19 January 2016,
- the remarks in my attached *request under Rule 47, paragraph 5.1, point (c) of the rules of procedure of the ECHR* from 6 June 2016,
- the remarks in Part I of my further written submission to the ECHR, from 8 November 2016, which, due to the large size of the file (45 MB), I am only linking here for download from the Adobe Cloud: <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:89b52cc6-1db2-4dec-9749-08cb9daa0606>, and lastly
- my remarks in the attached excerpt from the essay, *Völkerrechtliche Überlegungen zur Ukraine-Krise* ('International law reflections on the Ukraine crisis'), as well a number of my other works as evidence of the global treason that is threatening to force humanity into the abyss, unless human intelligence makes use of its prerogative of governance.

In view of the considerable size of the annexes attached to this request, **I hereby waive any time limit** within which the Council must respond.

(complimentary close)

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¹ Cf. the opening words of Charles IV in his Golden Bull:
*'Every kingdom that is divided **shall be abandoned**, for its princes have become the companions of thieves. Wherefore God has mingled in their midst the spirit of dizziness, so that they shall caress at midday as if in darkness; and their candle is no longer in its place, so that they shall be aimless and leaders of the aimless. For those who walk in darkness cause offence; and the aimless accomplish with vile spirit what they achieve in division.'*



Council of the European Union

General Secretariat

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit / Transparency

Head of Unit

Brussels, 23 May 2023

DELETED

Email: **DELETED**

Ref. 23/1068-lk/nb-ADD 2

Request made on: 11.04.2023

Dear **DELETED**,

We thank you for your letter of 3 May 2023.

Under Article 7(2) of Regulation (EC) 1049/2001, “In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.”

With our latest reply to your initial access request 23/1068, dated 3 May 2023, we granted to you access to all documents in the Council's possession regarding the Lisbon Intergovernmental Conference.

Given that it is not clear from the wording of your above mentioned letter, I would be grateful if you could clarify whether it is your intention to file a confirmatory application. In the affirmative, please specify on which “total or partial refusal” you are asking the Council to reconsider its position.

Yours sincerely,

Fernando FLORINDO

[E-mail message sent to access@consilium.europa.eu on Tuesday, 23 May 2023, 18:03]

From: **DELETED**

Sent: 23 May 2023 18:03

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: Ref. 23/1068-lk/nb-ADD 2

Please find enclosed my letter of today to the Council of the European Union.

(complimentary close)

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U.Z.: 23/1068-lk/vk
DELETED, 23. May 2023

Our ref.: 23/1068

Dear Mr Florindo,
Thank you for your letter of 23 May 2023.

I hereby reiterate the request that I made in my letter of 3 May and state that I am submitting a

**confirmatory
application**

for access to the minutes of the Lisbon Intergovernmental Conference from December 2007, expressly including all the remarks made in my previous letters and their annexes, which I would like to elaborate on, as follows:

To date, there has been nothing in your remarks to indicate that the requested minutes do not exist; you have merely stated that you do not have them.

The Council's replies communicated to me have therefore fallen short of my request, in that I still do not have access to the requested minutes; yet I assume that they do exist.

By way of explanation, and in order to avoid being accused of being a troublemaker, I would like to inform you that I am interested above all – though not only – in entries in the minutes which provide information as to whether and how the declarations annexed to the Final Act were adopted at that conference.

With reference to my remarks in my last letter of 3 May 2023, I would therefore suggest that, in direct application of the Treaties, one of the following alternative approaches be pursued:

- Since it can be assumed that it is the Portuguese government that has the minutes requested, it would be appropriate to ask them (or any other government of a member of the Union to which this applies), in agreement with the governments of all the other Member States which participated in the Lisbon Conference, to share them with the Council (so that it can forward them to me).

In this context, the governments should be assured that the minutes would, of course, be examined by the Council for any content that would preclude the granting of access to them in accordance with recognised and lawful principles (of the Union and its members) before access were granted, if necessary with appropriate redaction.

- Alternatively, in accordance with the primary legal situation set out here and within the meaning of the second sentence of Article 13(2) TEU¹, the Council should ensure that, pursuant to the second subparagraph of Article 15(3) TFEU, an ordinary legislative procedure pursuant to Article 294 TFEU is initiated by the Commission with regard to a regulation to be adopted concerning the Conventions or Intergovernmental Conferences pursuant to the first subparagraph of Article 48(3) or Article 48(4) TEU.

- In either of the aforementioned cases, or after the adoption of the regulation mentioned in the previous point, the Presidency of the **European Council**, also in accordance with Article 13 TEU cited above, would have to be invited to draw up the part of the rules of procedure of the aforementioned Conventions, with a view to their adoption incorporating this part, which provides that and governs how their documents are to be made available for access within the meaning of Article 15(3) TFEU² under the aegis of the Council; the same approach should be taken with regard to the current Council Presidency, i.e. the Presidency should draw up this part to be incorporated into the rules of procedure of the Intergovernmental Conferences with a view to their adoption.

In view of the objection raised by the Council last time, in 2014, when I requested access to the Ukrainian Council drafts, that diplomatic intergovernmental relations between the members of the Union would be jeopardised, I would like to comment once again on the CFSP procedure, to some extent summarising and to some extent adding to the essay I recently submitted on the question of the redundancy of the unanimity principle.

Article 16(2) TEU reads:

*'The Council shall consist of a representative of each Member State at ministerial level, who **may commit** the government of the Member State in question **and cast its vote**.'*

Similarly to Article 28(1) of the UN Charter³, it is emphasised here with the same result that the Council must be agile and efficient, which is why the representatives within it must, a priori, have independent or autonomous decision-making powers.

This is reinforced by the second subparagraph of Article 10(2) TEU, which reads:

*'Member States are represented in the **European Council** by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.'*

Inherent to the idea of *accountability* is that it typically comes after the fact. National requirements upon representatives in the Council which restrict their (lawful) freedom of decision-making are therefore inadmissible; they are bound only by international law, including European law, and their best knowledge and conscience.

In the vast majority of cases, far removed from national political and pseudo-political agendas, most of them set by such parties and their (treasonous) power apparatuses, these bases for cooperation among representatives in the Council allow unanimity to be achieved with due regard for what international law, including European law, prescribes as the need for action in a specific case.

In cases where dissenters nonetheless emerge, they are brought to order in accordance with the following provisions of the Treaties:

² The institutions shall practice mutual sincere cooperation.'

³ *The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.*

First of all it should be noted that the phrase 'these provisions' contained in the first clause of the fifth sentence of Article 24(1), second subparagraph TEU, which in its entirety reads as follows:

*The common foreign and security policy is subject to **specific rules** and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to **these provisions**, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union.*

refers to the *specific rules and procedures* mentioned at the start of that second subparagraph, which in turn refer to the provisions of Chapter 2 of Title V of the TEU and Part Five of the TFEU respectively. However, it is noticeable that no substance is given to the concept of a 'common foreign and security policy' (CFSP) in Title V, Chapter 1, in so far as it appears there at all. The heading of Title V of the TEU reads as follows:

'GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY', whilst the heading of Chapter 1 of Title V reads as follows:

'GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION' and that of Chapter 2 reads as follows: 'SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY'.

It follows, therefore, that the exclusion of the CFSP from the jurisdiction of the Court of Justice of the European Union, as established in the quotation above, applies only with regard to Chapter 2 and to the procedural and other provisions relating to external action contained in the TFEU, but not to Title V, Chapter 1 of the TEU.

The result of this is that, in the event of any representatives in the Council unobjectively refusing to approve CFSP decisions that are supported by an overwhelming majority and comply with the provisions of the aforementioned Chapter 1, i.e. in particular those which adhere to international law and the guiding principles set out in Article 21(1) of the TEU, the Council may be the subject of legal action before the Court of Justice of the European Union for an infringement established on the grounds of failure to act, in accordance with Article 265 of the TFEU, owing to non-compliance with these provisions and those contained in Article 21(2) of the TEU and also with the guidance of the European Council as set out in Article 22 of the TEU⁴. Although somewhat more lengthy, proceedings may nevertheless also be opened against the uncooperative Member State itself, under Articles 258 and 259 of the TFEU⁵.

If the Court of Justice of the European Union were to establish an infringement under Article 265, and this was not immediately followed by the prompt approval of the decision in question by the recalcitrant party, the European Union institutions responsible for the implementation of the CFSP could assume that such a decision should now be regarded as having been taken.

This is also consistent with the first paragraph of Article 275 of the TFEU, which reads as follows:

*The Court of Justice of the European Union shall not have jurisdiction with respect to **the provisions relating to the common foreign and security policy** nor with respect to acts adopted on the basis of those provisions.*

The text in bold likewise casually refers only to Chapter 2 of Title V of the TEU, as was the case above, since Chapter 1 of the TEU does not, as mentioned above, contain any specific substantive or directly procedural provisions relating to the CFSP.

⁴ Or before specialised courts established for this purpose under Article 257 of the TFEU, whose proceedings could be expedited pursuant to Article 23a of Protocol No 3.

⁵ Lastly, proceedings under Article 7 of the TEU are also a possibility, if such breaches occur with an appropriate frequency.

Insofar as the 13th and 14th declarations annexed to the Final Act of the Intergovernmental Conference held in Lisbon may be regarded as contextual annexes within the meaning of Article 31(2) of the Vienna Convention on the Law of Treaties and are to be referred to only if they have either been adopted unanimously or subsequently accepted⁶ by dissenters as an integral part of the Treaty, it is possibly evident that these statements are redundant insofar as Article 24(3) of the TEU clearly states:

(3) The Member States shall support the Union's external and security policy actively in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

Since the two abovementioned declarations give rise to an unresolvable contradiction, they cannot be regarded as preparatory work under Article 32 of the Vienna Convention on the Law of Treaties either.

In view of the foregoing, there is no longer any discernible objective reason why the EU's external relations and/or even less so the diplomatic relations within it should be made secret.

⁶ By its very nature, this is unlikely in the case of disagreement with such declarations annexed to final protocols.