



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 4 April 2002**

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from : General Secretariat of the Council  
to : Working Party on Information

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Subject : Public access to documents  
- Confirmatory application made by Mr Tony BUNYAN (3/02)

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Delegations will find annexed hereto:

- a request for access to documents sent to the General Secretariat of the Council by Mr Bunyan on 13 March 2002 (Annex 1);
- a reply from the General Secretariat of the Council to Mr Bunyan's request dated 3 April 2002 (Annex 2);
- a confirmatory application from Mr Bunyan dated 4 April 2002 (Annex 3).

Dear Sir/Madam,

I would be grateful if you could send me copies, by e-mail, of:

6438/02

6438/1/02

Yours faithfully,

Tony Bunyan  
editor Statewatch  
(member IFJ)

**COUNCIL OF  
THE EUROPEAN UNION**

**GENERAL SECRETARIAT**

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*- Access to Documents*

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Brussels, 3 April 2002

**Mr Tony Bunyan  
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**02/0424-jv**

Dear Mr Bunyan,

Thank you for your e-mail of 13 March 2002 requesting access to documents 6438/02 and 6438/1/02.

The General Secretariat has examined your request on the basis of 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 (Official Journal L 145 of 31.05.2001, page 43) and the specific provisions regarding public access to Council documents in Annex III to the Council's Rules of Procedure, as amended by Council Decision 2001/840/EC of 29 November 2001 (Official Journal L 313 of 30.11.2001, page 40). It has come to the following conclusions:

Documents 6438/02 and 6438/1/02 REV 1 are Notes from the Presidency to Coreper concerning a request for a negotiating mandate for the Presidency on judicial cooperation in criminal matters on the basis of Articles 24 and 38 of the Treaty on European Union. No decision has yet been taken by the Council on this matter.

Disclosure of these documents would reveal the preliminary reflections of the EU side on the definition of this mandate and its objectives for future negotiations. This would be prejudicial to the European Union's interest in the efficient conduct of negotiations with a third country. It could also weaken the EU position in future similar international negotiations. Access to these documents must therefore be refused on the basis of Article 4(1)(a) of Regulation 1049/2001 (international relations).

Apart from the document number and subject of these documents, which are already disclosed by this reply, this exception applies to the entire content of these documents, so that it is not possible to grant partial access to them on the basis of Article 4(6) of the Regulation.

Under Article 7(2) of the Regulation you may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

Yours sincerely,

For the General Secretariat

Jacob Visscher

Statewatch (4/04/02 11:47):

Dear Mr Visscher,

Thank you for your e-mail letter of 3 April regarding my request for >documents 6438/02 and 6438/1/02.

I wish to lodge a confirmatory application under Article 7.2 of the Regulation.

1. The General Secretariat's decision is that access cannot be granted because the documents concern a negotiating mandate for an agreement with the USA on judicial cooperation in criminal matters. The logic of this position is that access is to be denied to any documents concerning this agreement not only while the Council agrees a "negotiating position" but during the negotiations themselves and that the agreement may only be made public when it has been agreed/adopted. This would remove the decision from any parliamentary or public scrutiny and is a process which has no place in a democracy.

2. It is apparent, from other sources, that it is intended that the agreement will cover: extradition and mutual legal assistance and will cover, for example, the extradition of nationals, videoconferencing, joint investigative teams and the retention of telecommunications data. Such issues have huge implications for peoples' rights and civil liberties in the European Union.

3. Any agreement covering issues such as these would have implications arising from the fact that the USA is not a signatory for example to the ECHR (and consequent court judgements), the Schengen Convention or the 1995 and 1997 EU Directives on data protection.

4. Moreover, under Articles 24 and 38 of the TEU agreements with non-EU states and organisations can be made without any reference to national or European parliaments, let alone allowing civil society to take a view.

5. I would also challenge the decision not to grant partial access under Article 4.6. as this totally excludes any access even to the issues which are on the table.

In summary it is quite unacceptable in a democracy that such an agreement should be negotiated and agreed in complete secrecy.

Yours sincerely,

Tony Bunyan,  
editor Statewatch