



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 16 April 2002**

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from : General Secretariat of the Council

to : Working Party on Information

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No. prev. doc.: 7663/02

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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 attached a draft reply to the confirmatory application made by Mr Tony BUNYAN (see doc. 7663/02).

**DRAFT**  
**REPLY ADOPTED BY THE COUNCIL ON .....**  
**TO CONFIRMATORY APPLICATION BY MR TONY BUNYAN (3/02)**  
**- made to the Council by e-mail dated 4 April 2002,**  
**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**  
**for access to documents 6438/02 + 6438/1/02 REV 1**

The Council has carefully considered the application under Regulation (EC) No 1049/2001 and Annex III to the Council's Rules of Procedure, as amended by Council Decision 2001/840/EC of 29 November 2001 (OJ L 313 of 30.11.2001, p. 40) and has come to the following conclusion:

- 1) The applicant's request concerns two notes from the Presidency to the Permanent Representatives Committee on a request for a negotiation mandate for the Presidency on judicial cooperation in criminal matters on the basis of Articles 38 and 24 of the Treaty on European Union.
- 2) The Council has re-examined the documents in the light of the applicant's arguments and decided to refuse access to these two documents in their entirety.
- 3) As indicated in the General Secretariat's reply on 3 April 2002, no decision has yet been taken by the Council on a negotiation mandate. At the present stage, there are only preliminary discussions on the way to proceed and the possible terms of reference for a negotiation mandate with the US on this sensitive issue. Disclosure of this information would seriously undermine the Council's decision-making process, as it would make it impossible for the Council and its preparatory bodies to have a frank internal discussion on the strategic objectives it wants to achieve in future international negotiations. The Council considers that as regards the documents in question this interest outweighs the interest in "democratic control" of the negotiating process which is referred to by the applicant. In fact, release of those rather preliminary documents would thwart the efforts to achieve closer international cooperation to fight the various forms of organised crime more effectively, which is clearly also in the public interest. Access to the two documents must therefore be refused on the basis of Article 4(3), first subparagraph, of Regulation No. 1049/2001.

- 4) In addition, release of the documents in question would undermine the EU's position in future contacts with the United States on this sensitive issue. Comparison of the successive documents and the changes made in them would reflect the process of internal negotiation in the Council and lay open the strategical objectives of the EU side in future negotiations. This would clearly weaken the EU's position in those negotiations and be prejudicial to the European Union's interest in the efficient conduct of negotiations with a third country. Access to these documents must therefore be refused also on the basis of Article 4(1)(a) (international relations) of Regulation No 1049/2001.
- 5) However, the Council decided to release those parts of the documents which are not covered by any of these exceptions.
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