



**COUNCIL OF
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RUE DE LA LOI, 175
B – 1048 BRUSSELS
Tel: (32 2) 281 67 10
Fax: (32 2) 281 63 61
E-MAIL:
access@consilium.europa.eu

Brussels, 4 July 2013

Ms Sara Eyckmans

**e-mail:
coordinator@wsrw.org**

Ref. 13/0887-mj/ns

Dear Ms Eyckmans,

We have registered your request of 23 May 2013 for access to document 6664/06. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents¹ (hereafter the "Regulation") and specific provisions of the Council's Rules of Procedure². On 13 June 2013, the time-limit for replying to your application was extended by 15 working days. Having examined the request, the General Secretariat has come to the following conclusion:

Document **6664/06** is an opinion of the Council's Legal Service concerning a Partnership Fisheries Agreement between the European Community and the Kingdom of Morocco which has subsequently been concluded. The opinion analyses whether the text of the agreement that would allow Community vessels to fish in waters of the Western Sahara would be compatible with international law. The document consequently contains legal advice except for its paragraphs 1 - 5.

The document deals with issues of great political sensitivity. Moreover, negotiations on a Protocol to the abovementioned Agreement are currently on-going. Disclosure of the advice and the issues with which it deals would therefore undermine the protection of the public interest as regards international relations under Article 4(1)(a), third indent of the Regulation.

Moreover, the legal advice covered by this opinion deals with issues which are subject to current litigation before the courts in case T-512/12, Polisario v. Council. Furthermore, the advice is very broad in scope and relevant to other agreements involving the Western Sahara, including the abovementioned Protocol that is currently under negotiation. The legal advice is therefore particularly sensitive.

¹ Official Journal L 145, 31.5.2001, p. 43.

² Annex II to the Council's Rules of Procedure – Council Decision No 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

Disclosure of such a document would therefore undermine the protection of legal advice under Article 4(2), second indent, of the Regulation. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences.

As regards the existence of an overriding public interest in disclosure in relation to the protection of legal advice under the Regulation, the General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interest so as to justify disclosure of the document.

In the view of the foregoing, the General Secretariat of the Council is unable to grant you full access to this document. However, in accordance with Article 4(6) of the Regulation, you may have access to paragraphs 1 - 5 of the document which are already publicly available.

Statutory remedy notice

Pursuant to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply³.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosure

³ Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.