



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, 19 December 2018

Ms Sara Eyckmans

Email: coordinator@wsrw.org

Ref. 18/2307-mj/ns

Requests made on: 22.11.2018

Deadline extension: 13.12.2018

Dear Ms Eyckmans,

Thank you for your request for access to the legal opinion of the Council on the draft amended Fisheries Agreement and the draft new Fisheries Protocol with Morocco.¹

Document **13946/18** was identified as corresponding to your request.

Document 13946/18 is a contribution of the Council Legal Service, dated 7th November 2018, which examines the compatibility with the case-law of the Court of the proposals submitted on 8 October 2018 by the Commission to the Council for decisions on the signing and conclusion of a new Fisheries Agreement, including an Exchange of Letters, and a new Fisheries Protocol with Morocco.

This contribution contains legal advice touching upon issues which relate to the conduct of the international relationships of the Union and which are very sensitive.

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).

In view of its subject-matter, disclosure of the advice and the issues with which it deals would undermine the protection of international relations under Article 4(1)(a) third indent 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. The contribution includes multiple citations and analysis of the negotiating directives adopted by the Council along with its decision of 16 April 2018 authorising the Commission to open negotiations with Morocco in order to amend the Fisheries Agreement and conclude a new Fisheries Protocol. The disclosure of the relevant parts would make publically known information on the content and objectives of the negotiation mandate at a time when the agreement is not yet definitively adopted and would negatively affect the negotiation capacity of the Union. In addition, the legal advice pertains to matters that are sensitive in the context of international relations and the disclosure of the requested document could also have a negative bearing in the relations of the Union and its Member States with the Kingdom of Morocco.

The legal advice covered by this opinion deals with issues which are broad in scope and subject to current litigation before the courts. On 14 June 2018, an action of annulment has been brought against the Council's decision of 16 April 2018 authorising the Commission to open negotiations, on behalf of the European Union, for the purposes of amending the Fisheries Partnership Agreement and concluding a Protocol with the Kingdom of Morocco (Case T-376/18). Disclosure of the legal advice provided in the requested contribution would prejudice this as well as future proceedings, as there is a high risk that the new Agreement and Protocol will also be subject to litigation. Besides, the legal advice provided in the requested contribution goes beyond the present file and has a more horizontal dimension, as it could be transposed each time an agreement between the same parties is envisaged. The legal advice is therefore sensitive.

Disclosure of the requested document would therefore undermine the protection of court proceedings and legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001. 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.

Moreover, at this stage, the Agreement and Protocol have not yet been definitively concluded. Since the contribution deals with delicate issues, disclosure of the legal advice could negatively affect the completion of the ongoing procedure for the conclusion of the Agreement thus undermining the decision-making process pursuant to Article 4(3) of Regulation (EC) No 1049/2001.

As regards the existence of an overriding public interest in disclosure, the General Secretariat considers that, on balance, the principle of transparency which underlies Regulation (EC) No 1049/2001 would not, in the present case, prevail over the above indicated interests so as to justify disclosure of the requested document.

In the view of the foregoing, the General Secretariat of the Council is unable to grant you full access to document 13946/18. However, in accordance with Article 4(6) of Regulation (EC) No 1049/2001, you may have access to paragraphs 1 to 3 including footnotes 1 to 7.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).²

Yours sincerely,

Paulo VIDAL

Enclosure

² 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.