REPLY TO CONFIRMATORY APPLICATION 01/c/01/24
made by email on 8 January 2024 and registered on the same day

The Council has considered the confirmatory application under 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 documents¹ (hereinafter referred to as “Regulation (EC) No 1049/2001”) and Annex II to the Council's Rules of Procedure² and has come to the following conclusion:

1. On 8 November 2023, the Applicant submitted a request for access for the following documents, concerning the WHO Framework Convention on Tobacco Control (FCTC) – Tenth session of the Conference of parties (COP10): ST 12851/2023 INIT, ST 12851/2023 ADD 1, ST 13430/2023 INIT, ST 13430/2023 REV 1, ST 14595/2023 INIT, ST 14437/2023 ADD 1, ST 14807/2023 INIT, ST 14761/2023 ADD 1, ST 14807/2023 COR 1, ST 14761/2023 ADD 1 REV 1. The request was registered on the same day.

2. On 20 December 2023, the General Secretariat of the Council (“GSC”) replied to this application by:
   a) granting full access to documents ST 14807/23 INIT + COR1.
   b) refusing access, on the basis of Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001, to documents ST 12851/23 INIT + ADD1, ST 13430/23 INIT + REV1, ST 14595/23 INIT, ST 14437/23 ADD1 and ST 14761/23 ADD1 REV1.
   c) informing the Applicant that document ST 14761/23 ADD1 had been declared null and void.

¹ OJ L 145, 31.5.2001, p. 43.
3. On 8 January 2024, the Applicant introduced a confirmatory application and asked the Council to reconsider the GSC’s decision for those documents to which access was refused. The Applicant claimed that it was in the interest of EU citizens to know which positions the public body representing them would take on behalf of the EU at the FCTC COP10. The Applicant also indicated that the Council had in the past published negotiating positions ahead of meetings.

4. The Council has carefully considered this confirmatory application. It has assessed, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and on account of the Applicant's arguments, whether full public access can be provided to the requested documents.

ASSESSMENT OF THE REQUEST UNDER REGULATION (EC) NO 1049/2001

5. Regarding the documents listed under paragraph 2(b) above, to which access was refused on grounds of Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001, the Council has thoroughly re-examined the requested documents, taking into account the state of play of the file, and has carried out all necessary consultations.

6. In this regard, the Council notes that, since the GSC’s first reply to the Applicant’s initial request, the tenth session of the Conference of parties (COP10) to the WHO Framework Convention on Tobacco Control (FCTC) has taken place in Panama (5 to 10 February 2024).

7. The Council has consequently come to the conclusion that the full disclosure of these documents would no longer have a negative effect on the negotiating position of the European Union at the tenth session of the Conference of the Parties to the FCTC (‘COP10’), nor disturb the dialogue between the Commission and the Member States in the Council, as well as the ability of the EU to negotiate at COP10 and promote EU tobacco control policies and regulatory approaches at the international level. Therefore, their access to the public would no longer undermine the protection of the public interest as regards international relations (Article 4(1), third indent, of Regulation (EC) No 1049/2001).
8. The Council notes that the present decision is based on an individual analysis of the content of the requested documents and the specific circumstances of the present case. It does under no circumstances constitute a precedent for the future, since each application shall be assessed and judged on its own merit, pursuant to the established practice of the Council.

**CONCLUSION**

9. For the reasons set out above, the Council concludes that, at this stage, full access can be granted to the following documents, since their content is no longer covered by any of the exceptions to disclosure provided for in Regulation (EC) No 1049/2001: ST 12851/23 INIT + ADD1, ST 13430/23 INIT + REV1, ST 14595/23 INIT, ST 14437/23 ADD1 and ST 14761/23 ADD1 REV1.