



I.

CONSEIL DE
L'UNION EUROPÉENNE

Bruxelles, le 17 décembre 2009 (21.12)
(OR. en)

16342/09

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NOTE POINT "I/A"

du:	groupe "Information"
au:	Coreper (1ère partie) / Conseil
n° doc. préc.:	16341/09
Objet:	Accès du public aux documents - Demande confirmative n° 29/c/02/09

Les délégations trouveront en annexe un projet de réponse du Conseil à la demande confirmative n° 29/c/02/09 tel qu'il résulte de l'examen effectué par le groupe "Information" lors de sa réunion du 16 décembre 2009.

Par ailleurs, la délégation du Royaume-Uni a fait la déclaration suivante:

"Compte tenu de l'approche en matière de transparence adoptée dans le cadre de l'Accord commercial anti-contrefaçon (ACAC), le Royaume-Uni souscrit à la réponse du Conseil à la demande d'accès aux documents au titre de la liberté de l'information. Nous estimons qu'il n'y a pas lieu de divulguer l'annexe, qui expose les positions des États membres et d'autres partenaires dans le cadre de l'ACAC, parce que cela risquerait de porter atteinte à la protection des relations internationales. Toutefois, nous estimons que la première page du document peut être divulguée; il s'agit en effet du compte rendu d'une réunion consacrée aux dispositions pénales, qui n'inclut aucun texte particulier. Le point 12 de la réponse de l'UE traduit bien cette situation puisqu'elle prévoit d'accorder un accès partiel.

En ce qui concerne l'ACAC plus généralement, le Royaume-Uni estime que la transparence est indispensable pour garantir la légitimité de l'accord et mettre un terme à la diffusion de rumeurs. Nous considérons que le manque de transparence est nuisible et qu'il n'est pas dans l'intérêt public."

Par conséquent, le Comité des représentants permanents est invité à suggérer que le Conseil, en point "A" de l'ordre du jour de sa prochaine session, marque son accord sur le projet de réponse figurant à l'annexe du présent document.

L'annexe n'est disponible qu'en langue anglaise.

DRAFT
REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION No 29/c/02/09
made by e-mail on 18 November 2009,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document 14696/09 (RESTREINT UE)

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 (OJ L 145 of 31.5.2001, p. 43) and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. The applicant refers to document 14696/09 (RESTREINT UE), which comprises an outcome of proceedings of the meeting of the "Friends of Presidency" Group on 14 October 2009 during which the Group discussed the draft position of the EU Member States on the Criminal provisions in Chapter 2 of the Anti-counterfeiting Trade Agreement (ACTA).
2. In its reply dated 4 November 2009, the General Secretariat refused public access to this document pursuant to Article 4(3), first subparagraph, of the Regulation (protection of the Council's decision-making process).
3. In his confirmatory application dated 18 November 2009, the applicant points out that internal classification is irrelevant to the decision on the right of access to documents under Regulation (EC) No 1049/2001. Moreover, the applicant refers to a European Parliament resolutions calling on the Council to ensure the widest publicity of ACTA-related documents. The applicant therefore claims that there is overriding public interest in disclosing documents on ACTA.
4. Having thoroughly examined the requested document and carried out internal consultations, the Council has come to the conclusion set out below.

5. On 20 November 2007, the Commission submitted a Recommendation to the Council to authorise the Commission to open negotiations of a plurilateral anti-counterfeiting trade agreement, in other words to join the ACTA negotiating process. A revised version of the Recommendation was submitted to the Council by the Commission on 29 February 2008 and adopted by the Council on 14 April 2008. Formal negotiations with the other ACTA partners were launched in June 2008. The EU's objective with ACTA partners is to conclude a new plurilateral treaty improving global standards for the enforcement of intellectual property rights (IPR), to more effectively combat trade in counterfeit and pirated goods.
6. The negotiations are still ongoing and there is, at this stage, no agreed text. So far, six rounds of negotiations have taken place, the latest one in Seoul on 4-6 November 2009. Participants at the meeting agreed that the next meeting would be hosted by Mexico in January 2010. Participants also reaffirmed their commitment to continue their work with the aim of concluding the agreement as soon as possible in 2010.
7. Document 14696/09 contains detailed information on the EU's position in the framework of the negotiations on ACTA. The Council considers that full disclosure of this text would reveal the EU's strategic objectives to be achieved in these negotiations. It would thereby compromise the overall conduct of the on-going negotiations and thus be prejudicial to the EU's interest in the efficient conduct of such negotiations.
8. The requested document bears the classification "RESTREINT UE", which is applied to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the European Union or one or more of its Member States, in accordance with Section II, paragraph 4 of the Council's security regulations ¹. In this regard, the applicant argues that matters of internal classification are irrelevant to the right of access to documents under Regulation (EC) No 1049/2001. The Council would stress that the applicant's request has been handled in accordance with the provisions laid down in Regulation 1049/2001, where the level of classification serves as an illustration of the sensitive nature of the requested document and not as grounds for refusal of the applicant's request.

¹ Council decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations, OJ L 101, 11.4.2001, p. 1.

9. Regarding the applicant's argument according to which a clear public interest exists in the transparency of documents relating to the ACTA negotiations, as demonstrated by the European Parliament's resolutions on the matter, it must be underlined that the exceptions provided for in Article 4(1)(a) of the Regulation, including the protection of public interest as regards international relations, are mandatory. Accordingly, after having determined that the conditions were met for the application of the international relations exception pursuant to Article 4(1)(a), third indent of the Regulation, the Council is bound to refuse public access to the requested document, without the possibility of weighing the need for protection of the requested documents against the public interest in the disclosure of the document, as evoked by the applicant.
10. The applicant argues that the new requirements introduced by Article 15(2) TFEU relating to the transparency of the institutions' legislative activity should be taken into account in the present case. In this regard, the Council would point out that the ACTA negotiations, which the requested document relates to, do not fall under the institutions' legislative activity under the Treaties.
11. In those conditions, full public access to document 14696/09 is denied pursuant to Article 4(1)(a), third indent, of the Regulation (protection of the public interest as regards international relations).
12. The Council has also examined, pursuant to Article 4(6) of the Regulation, the possibility of granting partial access to the document and decided that partial access may be given to page 1 of the document which is not covered by the above-mentioned exception.