



**СЪВЕТ НА
ЕВРОПЕЙСКИЯ СЪЮЗ**

**Брюксел, 20 февруари 2009 г. (24.02)
(OR. en)**

5475/09

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API 3
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БЕЛЕЖКА ПО ТОЧКИ „I/A“

От: Работна група „Информация“
До: Корепер (II част)/Съвета
№ предх. док.: 5474/09
Относно: Публичен достъп до документи
- Потвърдително заявление 01/с/01/09 от
г-жа Eva MORAGA GUERRERO

Приложено се изпраща на делегациите проект за отговор от Съвета на потвърдително заявление 01/с/01/09 от г-жа Eva MORAGA GUERRERO във вида след разглеждането му на заседанието на работна група „Информация“ от 19 февруари 2009 г.

Делегациите на Финландия и на Швеция заявиха, че ще гласуват против проекта за отговор и направиха следното изявление:

„Тъй като в конкретния случай до документа вече има публичен достъп, не е необходимо той да не бъде оповестен съгласно член 4, параграф 3, който засяга защитата на процеса на вземане на решения на институцията.“

Мнозинството от делегациите се съгласиха резултатът от гласуването да бъде публикуван.

С оглед на това Комитетът на постоянните представители се приканва да предложи на Съвета на следващото си заседание:

- да впише като точка „А“ съгласието си по проекта за отговор, приложен към настоящия документ, като отбележи, че делегациите на Финландия и на Швеция са гласували против,
- да вземе решение за публикуване на резултата от гласуването.

Приложението е само на английски език.

DRAFT

REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION 01/c/01/09
made by Ms Eva MORAGA GUERRERO to the Council
by e-mail on 16 January 2009,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document 16338/08

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 2006/683/EC, Euratom - OJ L 285 of 16.10.2006, p. 47) and has come to the following conclusion:

1. The applicant refers to document 16338/08, a note from the General Secretariat to the Working Party on Information concerning the Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents. The document contains proposals by various delegations for modifications as regards the Commission proposal.
2. In its reply dated 17 December 2008, the General Secretariat granted public access to the document, including delegations' positions but excluding those parts which enable the delegations concerned to be identified. Public access to these parts was refused pursuant to Article 4(3) of the Regulation (protection of the Council's decision-making process).
3. In her confirmatory request, the applicant claims that none of the arguments given by the General Secretariat of the Council in its initial reply "*reasonably explained a) why disclosure of delegations' names in association with their proposals would seriously undermine the Council's decision-making process and b) why, according to the General Secretariat, there is not an overriding public interest that might nevertheless justify disclosure of the document concerned*".

4. The Council has examined the above-mentioned document in the light of the applicant's arguments and decided as follows:

5. As indicated above, the document under scrutiny concerns the proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents. The Commission submitted its proposal on 30 April 2008 (COM(2008) 229 final). The proposal is currently under discussion by the two branches of the legislative authority in the framework of the co-decision procedure.

The Working Party on Information, the Council's preparatory body responsible for the proposal, has met several times to carry out a first examination of the proposal. In the framework of these discussions, delegations have put forward preliminary views on the modifications contained in the Commission proposal. These discussions are still in a preliminary stage and no convergence of views has been recorded and no conclusions have been drawn on the issues raised. The written contributions contained in the requested document relate to three particularly sensitive issues in the context of the preliminary discussions within the Council, which have not, until now, been subject of detailed discussions in the Working Party on Information. In view of the early stage of the decision-making process where thorough discussions have not yet taken place on the delicate issues raised in the requested document and a clear approach has not yet emerged on these issues, disclosure of the name of the delegations that have made the proposals contained in the document would adversely affect the efficiency of the Council's decision-making process by compromising the Council's ability to reach an agreement on the dossier, and, in particular, narrow those delegations' room for compromise within the Council.

In fact, the risk of seriously undermining the Council's decision-making procedure is reasonably foreseeable and not purely hypothetical. If it were to be accepted that such documents containing the written position of delegations on particularly sensitive issues were to be disclosed in their entirety in an ongoing decision-making procedure, delegations would be induced to cease submitting their views in writing, and instead would limit themselves to oral exchanges of views in the Council and its preparatory bodies, which would not require the drawing up of documents. This would cause significant damage to the effectiveness of the Council's internal decision-making process by impeding complex internal discussions on the proposed act, and it would also be seriously prejudicial to the overall transparency of the Council's decision-making.

The Council has weighed the public interest relating to the efficiency of its internal decision-making against the public interest in increased openness, which guarantees that the EU institutions enjoy greater legitimacy and are more accountable to the citizens, in particular when they act in their legislative capacity. It was precisely as a result of this balancing that the General Secretariat decided, in reply to the applicant's initial request, to release the contents of the requested document, whilst suppressing the name of the respective delegations. This solution enables, on one hand, citizens to scrutinise, in accordance with the democratic principles, the information which forms the basis of the proposed legislative act under discussion within the Council, and on the other, to preserve the effectiveness of the Council's decision-making process, as explicitly provided for in Article 207(3) TEC.

6. The Council has also examined whether it would be possible to assess, on a deletion-by-deletion basis, whether the name of the Member States concerned could be released. However, this option was rejected because it would lead to very arbitrary assessments which themselves could be challenged. This approach does not, of course, prevent the Member State delegations concerned from making public their own position, as they see fit.

7. Finally, the Council recalls that this document and any other legislative document relating to the proposed Regulation will be made available to the public after the final adoption of the act in accordance with the rules laid down in Article 11(6) of Annex II to the Council's Rules of Procedure.

8. Taking into account the above, the Council holds its view that, on balance, all possible factors which would, at the present stage, plead in favour of releasing the document in question in its entirety are outweighed by the need to protect the Council's decision-making process. Therefore, the Council confirms the decision of the General Secretariat in reply to the initial application, whereby it granted, in accordance with Article 4(6) of Regulation 1049/2001, partial access to document 16338/08, excluding those parts of the document which enable the delegations concerned to be identified. Public access to those parts has to be refused pursuant to Article 4(3), first subparagraph. of the Regulation (protection of the Council's decision-making process).
