



**RADA  
EVROPSKÉ UNIE**

**Brusel 26. listopadu 2007 (27.11)  
(OR. en)**

**14484/07**

**INF 133  
API 50  
JUR 382**

**POZNÁMKA K BODU „I/A“**

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Odesílatel: Pracovní skupina pro informace

Příjemce: Coreper (část II) / Rada

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Č. předchozího dokumentu: 14483/07 INF 132 API 49 JUR 381

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Předmět: Přístup veřejnosti k dokumentům  
- potvrzující žádost předložená Robertem ZBÍRALEM (14/c/01/07)

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Delegace naleznou v příloze návrh odpovědi Rady na potvrzující žádost předloženou Robertem ZBÍRALEM (14/c/01/07) ve znění po projednání v Pracovní skupině pro informace na jejím zasedání dne 22. listopadu 2007.

Česká, dánská, finská a švédská delegace oznámily, že budou hlasovat proti návrhu odpovědi. Většina delegací souhlasila se zveřejněním výsledku hlasování.

Kromě toho byla učiněna tato prohlášení:

- česká delegace: „Česká republika je toho názoru, že dokument by měl být zpřístupněn celý.“;
- finská delegace: „Zveřejnění dokumentu nenaruší ochranu právního poradenství ve smyslu čl. 4 odst. 2. Z toho plyne, že dokument by měl být zpřístupněn celý.“;

- švédská delegace: „Dotyčný dokument by měl být zpřístupněn celý.“

Výbor stálých zástupců se proto vyzývá, aby Radě doporučil na příštím zasedání:

- vyjádřit, v rámci bodů „A“, souhlas s návrhem odpovědi uvedeným v příloze tohoto dokumentu s tím, že česká, dánská, finská a švédská delegace hlasují proti;
- rozhodnout o zveřejnění výsledku hlasování.

Příloha je k dispozici pouze v anglickém znění.

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## DRAFT

REPLY ADOPTED BY THE COUNCIL ON .....

TO CONFIRMATORY APPLICATION 14/c/01/07

made by Mr Robert ZBIRAL to the Council by e-mail on 29 October 2007,  
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,  
for access to document 6879/95

The Council has carefully considered the 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 6879/95, which is a note from the Council's Legal Service to the Permanent Representatives Committee (Part 2) concerning a study of the Council's practice regarding statements for the minutes.
2. In its reply to the applicant dated 23 October 2007, the General Secretariat refused to grant full access to the above-mentioned document on the basis of Article 4(2) of the Regulation (protection of court proceedings and legal advice). The applicant was able to inspect point 1 of the document which is not covered by the above-mentioned exception, as it does not contain legal advice as such.
3. The applicant claims to have a personal interest in taking cognizance of the content of the above-mentioned document for academic purposes. Furthermore, he is of the opinion that it is in the public interest to be provided with the information contained in the document, although, according to the applicant, "*a reason for not making the document public, may be the fact that the Council's Legal Service sees the use of statements as problematic*". Finally, the applicant considers that, at this stage, the document can be released since "*passages from it have been quoted and its content analysed by the media as well as in specialist literature*".

4. The Council has re-examined the above-mentioned document in the light of the applicant's arguments and decided to confirm the General Secretariat's decision for the reasons set out below.
5. The Court of First Instance made it clear that the "legal advice" exception in Article 4(2) of Regulation 1049/2001 includes advice on legislative matters (Case T-84/03, *Turco vs Council*, Judgment of the Court of First Instance of 23 November 2004, §§ 56-66). In accordance with the Court's interpretations in this Judgment at § 74, and pursuant to Article 4(2) (protection of legal advice) of the Regulation, the Council finds that full disclosure of these documents would undermine the protection of legal advice.
6. The document under scrutiny provides advice on the practice and relevance of statements for the minutes on legislative acts. The attention of the applicant is drawn to the fact that the independent advice of its Legal Service is an important instrument to enable the Council to be sure of the lawfulness of its legal acts and to move forward the discussion of the legal aspects of a dossier. If the Council were deprived of this instrument, the effectiveness of its work and the lawfulness of its acts could be jeopardised, regardless of the fact that the advice in question may substantially have been referred to or quoted without the Institution having released it into the public domain.
7. As regards the applicant's argument concerning the nature of the Council's Legal Service opinion, it would not be feasible to distinguish between opinions that might be considered "positive" and those that might be considered "negative", since it would be assumed *a contrario* that other opinions examined within that specific framework and refused cast doubts on the legality of the legislative acts and on their future implementation. It must also be borne in mind that a written opinion may be refined or revised orally at a later stage of the discussions within the Council, a fact which would not become public knowledge.

8. The Council considers that an overriding public interest is not constituted by the mere fact that the release of those documents containing the Legal Service's advice on legal questions arising in the debate on legislative initiatives would be in the general interest of increasing transparency and openness of the institution's decision-making process. In fact, this criterion would apply to virtually all written opinions or similar documents of the Legal Service, thereby making it practically impossible for the Council to refuse access to any Legal Service opinion under Regulation No 1049/2001.<sup>1</sup> The Council considers that such a result would be clearly contrary to the will of the legislator as it is expressed in Article 4(2) of Regulation No 1049/2001, since it would deprive that provision of any 'effet utile'.
9. As to the applicant's interest in inspecting the document for academic research purposes, the applicant's particular interest as a researcher constitutes a private, but not a public interest. Neither is it possible to grant privileged access, since the Institution is obliged, when releasing a document, to do so *erga omnes*.<sup>2</sup>
10. Finally, as regards the applicant's claim that document 6879/95 ought to be released since parts of it have been quoted in the public domain and made the object of analysis by media and other public sectors, suffice it to say that, at this stage, this legal advice has never been published. Neither is the Council aware or can be held responsible for any unauthorised divulgation that may have meanwhile occurred.
11. In the light of the above, in the Council's view, the applicant has not provided any evidence of or possible reason for public interest and the Council has identified none that would override its interest in protecting its legal advice.
12. In the absence of any other elements pointing to an overriding public interest in disclosure, the Council concludes that the interest of legal certainty, whose protection is one of the objectives underlying the exception of Regulation No 1049/2001 relating to legal advice, outweighs the applicant's interest in full disclosure of the above-mentioned document.

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<sup>1</sup> See in this respect also the *Turco* judgement referred to above, at §§ 81 to 83.

<sup>2</sup> Article 10(2) of Annex II to the Council's Rules of Procedure.

13. In the light of the above, the Council confirms the decision of the General Secretariat. Access to the content of document 6879/95 must, therefore, be refused by virtue of Article 4(2), second indent, of the Regulation, with the exception of the part which is not covered by this exception and to which the applicant was granted access in the initial phase.

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