



**RAT DER
EUROPÄISCHEN UNION**

**Brüssel, den 18. Juli 2008 (22.07)
(OR. en)**

9377/08

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I/A-PUNKT-VERMERK

der	Gruppe "Information"
für den	Ausschuss der Ständigen Vertreter (2. Teil) / Rat
Nr. Vordokument:	9376/08
<u>Betr.:</u>	Zugang der Öffentlichkeit zu Dokumenten – Zweit Antrag 07/c/01/08

Die Delegationen erhalten in der Anlage den Entwurf einer Antwort des Rates auf den Zweit Antrag Nr. 07/c/01/08, wie er sich aus der Prüfung durch die Gruppe "Information" in ihrer Sitzung vom 17. Juli 2008 ergeben hat.

Die schwedische Delegation erklärte, dass sie gegen den Antwortentwurf stimmen werde. Ferner hat die schwedische Delegation folgende Erklärung abgegeben: "Das Dokument sollte vollständig freigegeben werden, da die Richtlinie zurückgezogen wurde. Auf jeden Fall müssen die in dem Dokument wiedergegebenen Standpunkte Schwedens vollständig freigegeben werden, da sie für die Öffentlichkeit bereits zugänglich sind."

Der Ausschuss der Ständigen Vertreter wird daher ersucht, dem Rat vorzuschlagen, dass er auf seiner nächsten Tagung

- den in der Anlage enthaltenen Antwortentwurf – gegen die Stimme der schwedischen Delegation – als A-Punkt annimmt und
- beschließt, das Abstimmungsergebnis zu veröffentlichen.

Die Anlage liegt nur in englischer Sprache vor.

DRAFT
REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION 07/c/01/08
to the Council
made by e-mail on 23 June 2008,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents 7557/02 and 9862/02.

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 documents 7557/02 and 9862/02 which contain the outcome of proceedings of meetings of the Working Party on Migration and Expulsion on 21 March 2002 and 10 June 2002 respectively concerning the *proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities*.
2. By letter dated 18 June 2008, the General Secretariat granted public access to the above-mentioned documents, including delegation's positions, whilst withholding, on the basis of Article 4(3) of Regulation No 1049/2001, those parts which would allow the identification of the delegations concerned.
3. The applicant argues that full access to these documents ought to be granted since this proposal was withdrawn by the Commission in 2005 by its Communication to the Council and the European Parliament (COM (2005) 462) with the result that it is no longer under discussion within the Council and that the decision-making process is thus at an end.

4. The Council has re-examined the above-mentioned documents 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 proposed Directive forms part of the EU efforts to develop a comprehensive immigration policy. Since the Tampere European Council of October 1999, the Commission has sought to establish common rules for economic migration. In 2001, the Commission presented a proposal for a Directive on the conditions of entry and residence of third country nationals for the purpose of paid employment and self employed economic activities. Negotiations on a number of delicate issues related to this proposed Directive proved to be particularly difficult within the Council and the discussions came to an end in June 2002 after the first reading of the text in the appropriate Council working group.
6. In its Communication to the Council and the European Parliament concerning the outcome of the screening of legislative proposals pending before the legislator (COM (2005) 462 final, p.12) the Commission lists this proposal among the ones to be withdrawn and regarding which the EU action is to be reconsidered in the light of further analysis of the impacts. On 17 March 2006, the Commission confirmed its intention to withdraw this proposal by including it in the list published in the Official Journal¹.
7. On 29 October 2007, the European Commission presented a new proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment². Like the earlier withdrawn proposal, it concerns conditions of entry and residence for third-country nationals and standards on procedures for issuing the necessary permits. It is part of a series of politically sensitive legislative proposals related to the broader EU policy of management of migratory flows towards the EU.

¹ [OJ C 64, 17.03.2006, p. 8.](#)

² COM(2007) 637 final

8. As specified by the General Secretariat in its initial reply, documents 7577/02 and 9862/02 contain opinions for internal use as part of preliminary consultations within the Council relating to a matter where, pursuant to Article 4(3), first subparagraph of the Regulation, the decision has not been taken by the Council. Since the withdrawal of the proposed Directive by the Commission, discussions on the subject-matter - namely on the development of a common legal framework concerning the conditions of entry and residence of third-country nationals for the purpose of access to the labour market - have been resumed in the Council and are currently under way, on the basis of a proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.
9. The content of documents 7577/02 and 9862/02, if released in their entirety, could be misused or misinterpreted, since the position of Member States mentioned in those documents does not necessarily reflect the present view of those delegations on the matter. Full disclosure of the position of Member States could endanger the proper conduct of on-going negotiations within the Council on the proposed Directive, as it could reduce the flexibility of delegations to reconsider their past positions in the light of the arguments exchanged in the current debate, and could jeopardize the Council's ability to find compromise solutions and achieve progress on difficult questions. This could seriously undermine the conduct of the Council's on-going decision-making process on this issue.
10. The Council considers that, in respect of those parts of the documents which are still withheld, the General Secretariat's position struck a balance between the interest of protecting the Council's current decision-making process and the public interest in disclosure. It enabled the applicant to be informed of the arguments exchanged in the course of the discussion on a legislative proposal.
11. The Council has also examined whether it would be possible to assess, on a deletion-by-deletion basis, whether the name of the Member State 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 Council members concerned from making public their own position, as they see fit.

12. As there is no evidence suggesting an overriding public interest to warrant full disclosure of the document in question, the Council has concluded that the protection of the decision-making process outweighs the public interest in disclosure of the parts of the documents containing the names of the delegations. Public access to those parts of documents 7557/02 and 9862/02 is therefore denied on the basis of Article 4(3), first subparagraph, of the Regulation. However, the above documents as well as the preparatory documents relating to the proposed Directive in question will be made public in their entirety pursuant to Article 11(6) of Annex II to the Council's Rules of Procedure after the adoption of the said legislative act.
