



**COUNCIL OF
THE EUROPEAN UNION**

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"I/A" ITEM NOTE

from : Working Party on Information
to : Coreper (part 2)/Council

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Subject : Public access to documents
- Confirmatory application 05/c/01/08

Delegations will find enclosed a draft reply from the Council, as it stands after examination by the Working Party on Information at its meeting on 18 March 2008, to confirmatory application 05/c/01/08.

The Permanent Representatives Committee is accordingly asked to suggest that the Council, at its next meeting, record its agreement to the draft reply annexed to this document, as an "A" item.

The Annex is available in English only.

DRAFT

REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION 05/c/01/08
made to the Council by e-mail on 28 February 2008
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for access to document 5051/1/08 REV 1

The Council has carefully 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).

1. The applicant refers to document 5051/1/08 REV 1 which is a note from the Presidency to the Working Party on Civil Protection concerning the proposal for a Directive of the Council on the identification and designation of European critical infrastructure and the assessment of the need to improve their protection.
2. In first instance, the General Secretariat granted public access to the document, including delegations' positions, but excluding those parts which enable the delegations concerned to be identified and excluding the positions of Member States contained in point 7. Public access to these parts was refused pursuant to Article 4(3) of the Regulation (protection of the Council's decision-making process).
3. The Council has thoroughly re-examined the document concerned and carried out new consultations with the department of its General Secretariat in charge of this matter. It has come to the following conclusion.

4. The above-mentioned proposal for a Council Directive was submitted by the Commission on 18 December 2006. Since then, the Working Party on Civil Protection has examined the proposal at several occasions. Although substantial progress has been made, some questions remain outstanding. Based on delegations' comments, the Presidency is currently elaborating a compromise proposal. It follows that it is clear that the negotiations on this dossier have not been finalised yet.
5. With regard to the parts of the document to which the General Secretariat's refused public access, the Council considers that this solution strikes the right balance between the interest of protecting the Council's decision-making process and the public interest in disclosure. It enables the applicant to be informed of the arguments exchanged in the course of the discussion on a legislative proposal which is currently being examined within the Council.
6. However, the Council holds the view that, on balance, the interest in protecting the institution's decision-making process outweighs the public interest with regard to the identification of the delegations whose positions are recorded in the document. In the context of preliminary discussions and negotiations within the Council's preparatory bodies, the possibility for delegations to express their views freely constitutes an essential pre-condition for the Council's capacity to find compromise solutions and achieve progress on difficult questions.
7. The release at this stage of those parts of the documents which make it possible to identify which delegation takes which position would jeopardise this capacity, as it could considerably reduce the flexibility of delegations to re-consider their respective positions in the light of the arguments exchanged in the debate. This could seriously undermine its decision-making process.

8. 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.
9. As there is no evidence suggesting an overriding public interest to warrant disclosure of these parts of the document in question, the Council concludes that protection of the decision-making process outweighs the public interest in disclosure. Accordingly, the Council confirms the General Secretariat's decision. Public access to the above-mentioned parts of document 5051/1/08 REV 1 has to be refused pursuant to Article 4(3) of the Regulation (protection of the Council's decision-making process).
10. However, the Council considers that at this stage of the discussions within the Council's preparatory bodies the applicant can be granted public access also to those parts of the point 7 which contain the positions of the Member States. Nevertheless, the applicant's attention is drawn to the fact that these positions are of a provisional nature and likely to change in the course of the future discussions on this proposal.
11. Lastly, the document concerned exists only in its English language version. It is therefore not possible for the Council to grant public access to the document in Romanian.