



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 February 2010**

**5290/10**

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**"I/A" ITEM NOTE**

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

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No. prev. doc.: 5289/10

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Subject : Public access to documents  
- Confirmatory application made by Ms Sigita URDZE (No 01/c/01/10)

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Delegations will find enclosed a draft reply from the Council to confirmatory application made by Ms Sigita URDZE (No 01/c/01/10), as it stands after examination by the Working Party on Information at its meeting on 12 February 2010.

The Swedish delegation indicated that they would vote against the draft reply and made the following statement:

*"SE welcomes the proposal to give full access to documents BER/0993/07, PRA/0855/09 and PRA/0950/09. However, SE does not share the view that the remaining documents are covered in their entirety by the secrecy exception in article 4(1)(a) third indent. Full access should be granted to document LIS/0855/07, and further partial access should be granted to the remaining documents."*

A majority of delegations agreed to publish the result of the vote.

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, with the Swedish delegation voting against,
- decide to publish the result of the vote.

The Annex is available in English only.

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**DRAFT**  
**REPLY ADOPTED BY THE COUNCIL ON .....**  
**TO CONFIRMATORY APPLICATION No 01/c/01/10**  
**made by e-mail on 12 January 2010,**  
**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**  
**for public access to documents**

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 the following documents concerning demarches issued to Armenia, Azerbaijan and Georgia as from 2007:

1. BER/0993/07
2. LIS/1170/07
3. PRA/0855/09
4. PRA/0950/09
5. STO/0183/09
6. STO/0429/09
7. LIS/0855/07
8. BER/0812/07
9. PAR/0329/08

The documents are classified "RESTREINT UE", with the exception of BER/0993/07.

Document BER/0993/07 is a report on a demarche issued to Armenia. Documents LIS/1170/07, PRA/0855/09 contain reports on demarches issued to Azerbaijan, document PRA/0950/09 contains instructions for a demarche issued to the same country. Document STO/0183/09 contains a draft for terms of reference for a demarche to Azerbaijan and

document STO/0429/09 contains the final version of these terms of reference. LIS/0855/07 contain instructions for a demarche issued to Georgia, documents BER/0812/07 and PAR/0329/08 contain reports on demarches issued to the same country.

2. In its reply dated 12 January 2010, the General Secretariat refused public access to these documents pursuant to the third indent of Article 4(1)(a) (protection of the public interest with regard to international relations) of the Regulation.
3. Following the applicant's confirmatory application dated 12 January 2010, the Council has thoroughly examined the documents concerned and carried out new consultations. The Council has come to the following conclusion:
4. Démarches on human rights to the authorities of third countries and press statements are an important instrument of the EU's foreign policy. Démarches are usually carried out, sometimes in a confidential manner, in "Troika" format, or by the Presidency. Démarches are widely used to convey concerns related to human rights and to seek remedy to situations. The main subjects tackled by them are illegal detention, forced disappearances, the death penalty, extrajudicial executions, freedom of expression and of association, and the right to a fair trial.
5. As regards documents LIS/1170/07, STO/0183/09, STO/0429/09 and BER/0812/07, they contain demarches concerning alleged breach of human rights of certain individuals. Given the content of these documents, the Council holds the view that their full disclosure would put at risk the individuals mentioned in the documents and impair the EU's efforts to seek remedy to the situation, thus being detrimental to the protection of the public interest as regards public security. Accordingly, pursuant to the first indent of Article 4(1)(a) of the Regulation (protection of public interest with regard to public security), the Council is unable to grant full public access to these documents.

As the exception to the principle of transparency applies to the content of the entire documents, the Council is unable to grant partial access as provided for in Article 4(6) of the Regulation.

6. Regarding documents LIS/0855/07 and PAR/0329/08, they contain demarches conveying more general concerns related to human rights in the third country concerned. The Council is of the opinion that, in view of its sensitive content, disclosure of these documents would hinder the EU's diplomatic efforts continuously being made in order to maintain a constructive dialogue with the third country concerned on the respect of human rights and to find constructive solutions in problem situations related to human rights. If disclosed, the information contained in the documents would therefore also be detrimental to the good functioning of the relations between the EU and third country concerned. The Council therefore confirms the refusal given in the initial phase pursuant to Article 4(1)(a), third indent, of Regulation No 1049/2001 (protection of public interest with regard to international relations).

As the exception to the principle of transparency applies to the content of the entire documents, the Council is unable to grant partial access as provided for in Article 4(6) of the Regulation.

7. As for documents BER/0993/07, PRA/0855/09 and PRA/0950/09, the Council has come to the conclusion that the exception provided for in the third indent of Article 4(1)(a) of the Regulation no longer applies to these documents. The applicant may therefore have access to the contents of these documents.

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