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NOTE

from : General Secretariat of the Council

to : Working Party on Information

No. prev. doc.: 12767/11

Subject : Own-initiative inquiry OI/3/2011/KM by the European Ombudsman concerning the Council of the European Union

Delegations will find attached a draft reply to the own-initiative inquiry OI/3/2011/KM by the European Ombudsman concerning the Council of the European Union.

DRAFT

Brussels,

Mr Nikiforos Diamandouros
European Ombudsman
1, avenue du Président Robert Schuman
B.P. 403
F - 67001 Strasbourg

Subject: Your letter of 29 June 2011 relating to your own-initiative inquiry OI/3/2011/KM concerning the Council of the European Union

Sir,

Following our earlier correspondence relating to your own initiative inquiry OI/3/2011/KM concerning the Council of the European Union, I have the pleasure to inform you of the action taken by the Council in order to reduce the time needed for the processing of confirmatory applications for access to documents.

In that respect, a distinction should be drawn between a series of **general measures**, the purpose of which is to improve the quality of the service provided by the General Secretariat, when dealing with **initial requests** for access to Council documents (see point II. below), and **specific measures** taken in order to shorten the procedures for examining the **confirmatory applications** (see point III. below).

For the sake of completeness, a description of the existing procedures for dealing with both initial requests for access to Council documents and confirmatory applications, to which reference was made in my letter of 3 October 2011, is set out in point I. below.

I. Existing procedures for processing initial and confirmatory applications:

As regards the ***initial requests***, it should be recalled that these requests are processed by the Council's Transparency Service, which identifies the requested document(s) and examines on a case by case basis whether access can be granted. Unless the documents are already public, the

Transparency Service consults the policy department(s) responsible for the requested documents in order to determine to which extent access can be given.

When consulting the relevant policy department(s), the Transparency Service makes suggestions as regards the possibility of granting full or partial access, - with due regard to the ***subject*** and ***content*** of the documents and, as appropriate, the ***state of play*** of ongoing negotiations. The final decision on the request is, however, taken on the basis of the assessment made by the originating service(s) (i.e. the relevant policy department(s)), which - in case access to the requested documents has to be refused totally or in part - are called upon to clearly indicate the grounds for refusal, notably by providing the necessary information regarding the background and the context in which the requested documents were drawn up.

In the event of a ***confirmatory request*** for access, the Transparency Service processes the request as described above, but - in this case - the requested documents are also examined and the draft replies reviewed by a member of the Council Legal Service prior to the examination of the confirmatory requests by the Working Party on Information (WPI)

However, while in most cases the processing of the confirmatory request within the General Secretariat of the Council (GSC), involving the Transparency Service together with the originating service(s) and the Council's Legal Service is completed well before the expiry of the time-limit of 15 working days established in Regulation 1049/2001, possible delay in the finalisation of the Council's definitive reply to a confirmatory request¹ have so far often occurred for practical as well as procedural reasons.

¹ The decision on the final reply, set out in a so-called "I/A" Item Note, is to be adopted by the Council acting by simple majority

Thus, in particular due to the relatively low frequency of WPI-meetings² as well as the strict deadlines for the listing of the access to documents requests on the agenda of Coreper and the Council³, the entire period of time needed for the processing of confirmatory requests frequently exceeds the time limit provided for in Article 8 (2) of Regulation (EC) No 1049/2001⁴. The specific measures to overcome this procedural delay are set out in point III below.

II. General measures taken by the General Secretariat (processing of initial requests):

Within the Transparency Service, additional staff has recently been allocated to the processing of ***initial requests*** for access to Council documents. This measure is meant to enable the Transparency Service to

- cope more efficiently with an increasing number of (often complex) initial requests for access to a large number of documents;
- provide more detailed and user-friendly replies to the public and become more proactive in its contacts with the applicants in order to ascertain the scope of the requests and, whenever needed, keep the applicants informed about the different steps in the processing of their requests;
- develop closer contacts with the policy departments of the General Secretariat, which are responsible for the requested documents, and, as appropriate;
- provide better guidance to Council staff on the application of the access to documents rules.

Parallel to this, several measures are continuously being taken in order to raise awareness of the transparency rules within the General Secretariat, including training, issuing of staff communications, and information provided to staff via the Council's intranet.

² The WPI meets on average every three weeks.

³ The said "I/A" Item Note must be listed on the agenda of Coreper at least 3 working days before the meeting; if the "I/A" item is not listed on the Council's provisional agenda at least 14 days before the Council session, at which the final reply should be adopted, the inclusion of the item on the agenda at the beginning of the Council meeting requires a unanimity.

⁴ While Coreper usually meets every week, there may be almost two week long gaps between Council meetings.

III. Specific measures aiming at shortening the time needed for processing confirmatory applications.

In order to reduce the average time needed for the processing of confirmatory applications for public access to documents, the following specific measures have been taken:

- within the Transparency Service, one contact person is designated to liaise with Member States' delegations throughout the examination of a confirmatory request by the Working Party on Information (WPI), and delegations have moreover been requested to designate one delegate each who will be responsible for confirmatory applications examined by the Council and its preparatory bodies;
- a new functional mailbox has been created in order to facilitate the communication between the General Secretariat and delegations during that process;
- further to the ordinary meetings of the Working Party on Information (WPI), additional "Attachés" meetings may be convened with short notice in order to enable the WPI to examine one or more confirmatory applications more quickly, so the draft replies to these requests can be put on the agenda of Coreper and the Council for final approval within the time limit provided for in Article 8 (2) of Regulation 1048/2001;
- alternatively, and instead of convening a meeting in the "Attachés only" format, an informal written consultation procedure may be organised at Working Party level in order to allow delegations to swiftly examine a confirmatory request before its referral to Coreper/the Council for adoption;
- finally, and in order to cater for the fact that no ordinary Coreper/Council meetings take place in August and also that Coreper and the Council meet less frequently during the months of January, April and July, the Council will, whenever necessary, be called upon to adopt replies to confirmatory requests by a formal written procedure.

As it appears from the above, a number of practical and organisational measures have now been put in place with a view to substantially reduce the time needed for the processing of confirmatory applications. Moreover, the general measures taken in order to enable the General Secretariat to deal more efficiently with the initial requests also aim at improving the overall quality and user-friendliness of the services provided by the Council and its General Secretariat as regards public access to Council documents.

However, precisely bearing in mind (a) the Council's wish to improve the overall quality of its services through thorough analysis of request for public access to documents as well as (b) the Council's obligation to ensure the legal consistency of the replies given to confirmatory applications, the Council may also in the future have recourse to the possibility, foreseen in Regulation (EC) No 1049/2001, of extending the time limit for the processing of such applications by 15 working days in exceptional cases.

(Complimentary close)
