



**CONSEIL DE  
L'UNION EUROPÉENNE**

**Bruxelles, le 10 décembre 2010 (14.12)  
(OR. en)**

**16775/10**

**INF 162  
API 87  
JUR 493**

**NOTE POINT "I/A"**

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du:	Groupe "Information"
au:	Coreper (1 <sup>ère</sup> partie)/Conseil
n° doc. préc.:	16774/10
Objet:	Accès du public aux documents - Demande confirmative n° 24/c/01/10

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Les délégations trouveront en annexe un projet de réponse du Conseil à la demande confirmative n° 24/c/01/10, tel qu'il résulte de l'examen effectué par le groupe "Information" lors de sa réunion du 10 décembre 2010.

Les délégations danoise et suédoise ont fait savoir qu'elles voteraient contre le projet de réponse et ont fait la déclaration ci-après:

*"DK et SE se félicitent de l'initiative visant à accorder un accès partiel plus large. Elles estiment toutefois qu'il conviendrait d'accorder l'accès à d'autres parties des documents. Seules les parties des documents qui permettent d'identifier les délégations concernées devraient rester secrètes."*

La majorité des délégations a marqué son accord pour que le résultat du vote soit rendu public.

Le Comité des représentants permanents est donc invité à suggérer que, lors de sa prochaine session, le Conseil:

- fasse acter, en point "A", son accord sur le projet de réponse figurant à l'annexe du présent document, les délégations danoise et suédoise votant contre;
- décide de rendre public le résultat du vote.

L'annexe n'est disponible qu'en anglais.

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**DRAFT**  
**REPLY ADOPTED BY THE COUNCIL ON .....**  
**TO CONFIRMATORY APPLICATION No 24/c/01/10,**  
**made by e-mail on 22 November 2010,**  
**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**  
**for public access to documents 12926/10, 12926/1/10 REV 1, 13176/10 and 13400/10**  
**(all classified RESTREINT UE)**

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 documents 12926/10, 12926/1/10 REV 1, 13176/10 and 13400/10 (all classified RESTREINT UE). The three first documents are notes from the Presidency concerning Chapter 2 Section 3 ("Criminal enforcement") of the Plurilateral Anti-Counterfeiting Trade Agreement (ACTA). The fourth document contains a report drafted by the Commission services on the 10th round of ACTA negotiations in Washington on 16-20 August 2010.
2. In its reply dated 3 November 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 Regulation 1049/2001 on public access to documents.
3. In the confirmatory request made on 22 November 2010, the applicant refers to European Parliament resolutions and its written declaration calling on the Council to allow public access to ACTA-related documents. The applicant also argues that, as criminal provisions for the enforcement of intellectual property rights are not part of the *acquis* at present, negotiating criminal sanctions in this area with third countries may be in breach of the treaties. Moreover, the applicant argues that there is no legal basis in the Treaties for withholding information or for concluding confidentiality agreements with third countries when those agreements touch upon legislative matters. The applicant therefore claims that there is overriding public interest in disclosing documents on ACTA.

4. The Council has examined the above-mentioned documents in the light of the applicant's arguments and has come to the following conclusion:
5. On 20 November 2007, the Commission submitted a Recommendation to the Council to authorise the Commission to open negotiations of a plurilateral Anti-counterfeiting Trade Agreement, in other words to join the ACTA negotiating process. A revised version of the Recommendation was submitted to the Council by the Commission on 29 February 2008 and adopted by the Council on 14 April 2008. Formal negotiations with the other ACTA partners were launched in June 2008. The EU's objective with ACTA partners is to conclude a new plurilateral treaty improving global standards for the enforcement of intellectual property rights (IPR), to more effectively combat trade in counterfeit and pirated goods.
6. After 11 negotiating rounds, the ACTA negotiating partners made a statement on 15 November 2010 announcing that they had finalized the text of the agreement. This final consolidated text was published on the internet. On 25 November 2010, the agreement was initialled. Following this, the negotiating partners met in Sydney from 29 November till 3 December 2010 for a session of legal finalisation.
7. The Commission will now submit proposals for Council Decisions on the signature as well as the conclusion of the Agreement.
8. Documents 12926/10 and 12926/1/10 REV 1 (both classified RESTREINT UE) are notes from the Presidency to delegations concerning Chapter 2 Section 3 ("Criminal enforcement") of the Plurilateral Anti-Counterfeiting Trade Agreement (ACTA). Document 13176/10 (RESTREINT UE) is a note from the Presidency to the Permanent Representatives Committee concerning the same Chapter. Document 13400/10 (RESTREINT UE) contains a report drafted by the Commission services regarding customs issues discussed during the 10th round of ACTA negotiations in Washington on 16-20 August 2010.
9. The four documents contain detailed information on the positions of the different ACTA partners with regard to several sections of ACTA as well as EU comments concerning other negotiating partners' positions. Moreover, all the documents reveal details on the EU's position on the specific sections.

10. The Council considers that, given the sensitive content of the documents, their full release to the public would undermine the protection of the public interest as regards the EU's international relations. Notwithstanding the fact that the ACTA negotiations have been finalized, disclosure of preparatory documents containing the positions of the negotiating parties would hamper open and constructive co-operation in similar negotiations in the future by negatively affecting the climate of confidence among the negotiating partners. Moreover, if the EU's negotiating partners had reason to believe that their positions expressed during confidential negotiations could be made public by the EU side, it would also have an adverse effect in future negotiations.
11. For these reasons, the Council confirms the General Secretariat's decision to refuse full public access to the documents concerned, pursuant to the third indent of Article 4(1)(a) (protection of the public interest with regard to international relations) of Regulation (EC) No 1049/2001.
12. Regarding the applicant's argument according to which a clear public interest exists in the transparency of documents relating to the ACTA negotiations, as demonstrated by the European Parliament's resolutions and written declaration on the matter, it must be underlined that the exceptions provided for in Article 4(1)(a) of Regulation (EC) No 1049/2001, including the protection of public interest as regards international relations, are mandatory. In consequence, once it is established that the requested document falls within the sphere of international relations and that the protection of the invoked interest would be impaired if the document were to be disclosed, the institution must refuse public access. Article 4(1)(a) of the Regulation does not allow the institution to balance the protected interest against other interests, such as those invoked by the applicant.
13. As regards the applicant's argument that international negotiations touching upon legislative matters should be conducted openly, the Council would like to point out that the negotiation of international agreements does not fall under the institution's legislative activities under the Treaties, and thus, is not subject to the respect of the principle of increased openness.

14. However, the Council has examined, the possibility of granting extended partial access to the above-mentioned documents, pursuant to Article 4(6) of the Regulation. In the light of this examination, the Council has come to the conclusion that further partial access may be granted to the following additional parts of the requested documents which are not covered by any of the exceptions under Regulation 1049/2001:

- documents 12926/10 and 12926/1/10 REV 1:

- page 2: first four paragraphs without the name of the delegation mentioned; title and first two paragraphs of point 1
- first sentence on page 3
- page 6:
  - point 2: first paragraph
  - point 3: first and second paragraph without the names of the negotiating partners who have expressed the positions
- page 7: title of point 4
- page 8, point 5: second and third paragraph without the names of the negotiating partners who have expressed the positions
- page 9: titles of points 6 and 7
- page 10: title of point 8
- page 11: third paragraph without the names of the negotiating partners who have expressed the positions; title and first paragraph of point 9
- page 12: title and third and fourth paragraph of point 10
- page 13: title of point 11
- page 14: title, first and second paragraph of point 12 without the names of the negotiating partners who have expressed the positions
- page 15: titles, first and second paragraphs of points 13 and 14 without the names of the negotiating partners who have expressed the positions

Moreover, pages 22 and 23 of document 12926/10 contain an extract of a public Council document, doc. 12847/10, which was annexed to document 12926/10 due to a clerical error. The contents of pages 22 and 23 of document 12926/10 are thus not covered by any of the exceptions under Regulation 1049/2001.

- document 13176/10:

- page 2
- page 4: second paragraph

- document 13400/10:

- page 6

Partially declassified version of documents 12926/10, 12926/1/10 REV 1, 13176/10 and 13400/10, which include the additional parts listed above, are set out in documents 12926/10 EXT 2, 12926/1/10 REV 1 EXT 2, 13176/10 EXT 2 and 13400/10 EXT 2.

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