



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 May 2011

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REV 1**

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COVER NOTE

from : General Secretariat of the Council
to : Working Party on Information
Subject : Public access to documents
- Confirmatory application made by Mr Ronny PATZ (No 11/c/01/11)

Delegations will find attached:

- request for access to document sent to the General Secretariat of the Council on 11 April 2011 and registered on the same day (Annex 1).
- reply from the General Secretariat of the Council dated 18 April 2011 (Annex 2).
- confirmatory application dated 26 April 2011 and registered on the same day (Annex 3).

[E-mail message sent on 11 April 2011 - 14:11]

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application

This electronic form has been submitted in **EN**

Title/Gender: Mr - Mr

Family Name: Patz

First Name: Ronny

E-Mail: ronny.patz@uni-potsdam.de

Occupation:

On behalf of:

Address:

Telephone:

Mobilephone:

Fax:

Requested document(s): I hereby request access to document 8661/11 (cf. agenda of the Shipping Working Party meeting this Wednesday)

PS.: If possible it would be great to get an answer by the end of the week since the document is needed for a reporting activity next week. Thanks!

1st preferred linguistic version: EN - English

2nd preferred linguistic version: FR - French



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

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Brussels, 18 April 2011

Mr Ronny Patz

e-mail:

ronny.patz@uni-potsdam.de

11/0721-mj/jj

Dear Mr Patz,

Your request of 11 April 2011 for access to document 8661/11 has been registered by the "Access to Documents" unit. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (Official Journal L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

Document **8661/11** is a note from the General Secretariat of the Council on the *Proposal for a Regulation (EU) [.../....] of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency*. No decision has yet been taken on the matter.

You may have access to the content of the document, including delegations' positions, but excluding those parts which enable the delegations concerned to be identified.

The General Secretariat considers this to be a good compromise between protection of the decision-making process of the Council, on the one hand, and public interest in disclosure, on the other. This allows you to be informed of the arguments raised during discussion concerning an issue on which the Institution has not yet taken a decision.

Nevertheless, the General Secretariat considers that protection of the institution's decision-making process outweighs possible public interest in identifying the delegations whose positions are set out in the document. In the framework of preliminary discussions and negotiations within the Council's preparatory bodies, it is essential that delegations are able to express their views freely so that the Council can find compromise solutions and achieve progress on delicate questions.

Disclosure at this stage of those parts of the document which allow identification of the delegations that have adopted positions on the subject still under discussion, would jeopardise this process, since it could seriously narrow delegations' room for manoeuvre to review their positions in the light of arguments put forward during discussion. The General Secretariat is of the opinion that disclosure of these parts of the document could seriously undermine the Council's decision-making process. Accordingly, pursuant to Article 4(3), first subparagraph of the Regulation (protection of the Council's decision-making process), the General Secretariat is at present unable to grant you access to these parts of the document.

Nevertheless, pursuant to Article 11(6) of Annex II to the Council's Rules of Procedure, this document and any other legislative document relating to this Regulation shall be made available to the public in full after the final adoption of the act, unless their content is covered by Article 4(1), (2) or (3), second subparagraph, of Regulation (EC) No 1049/2001.

According to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply ¹.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosure

¹ Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.

[Confirmatory application sent by e-mail on 26 April 2011 - 16:29]

Dear Council of the European Union,

following the Council's decision to only give partial access to document 8661/11 (Ref.: 11/0721-mj/jj), leaving out the most important details, namely information which member state represents which position, I hereby would like to file a confirmatory application in accordance with the EU access to document regulation. The confirmatory application may be made public in the Council's register.

I'm not a lawyer and I don't want to search through tons of legal documents to find detailed reasons why your decision is obviously wrong. So all I'd like to say is that

a) Earlier in the process, the Council did not consider publishing member states' positions in the same decision-process a danger (cf.

Council document 5172/11, available here:

<http://register.consilium.europa.eu/pdf/en/11/st05/st05172.en11.pdf>).

Why is it now?

b) In the reply you have sent to me you don't even try to reason why in this particular case (!) you consider making member states positions public is a problem. I think the EU Court has asked you and other EU institutions in several cases to give concrete reasoning instead of a general reference to the "protection of the institution's decision-making process" that you have proposed to me in your reply.

Why do you continue this practice despite the Court rulings?

c) I think that in the recent EU Court case Access Info v. Council of the European Union the EU Court made even clearer that hiding member states positions, in particular in legislative processes, is unlawful and should stop.

Is there any reason to ignore the Court's decision?

d) And beyond these arguments, there is an obvious overriding public interest in publicising member states positions in this case.

Together with journalists and bloggers from all around the EU (and beyond) I was at the European Maritime Safety Agency (EMSA) last week and we discussed both the work of this EU body and the (possible) reform. During the discussions several questions were raised with regard to member states' relations to EMSA, making it obvious that there is a clear public interest in knowing what member states think about EMSA (and its reform). I would have liked to write an informed blog post about this, but can't do this due to your refusal to grant full access.

Can you tell why you think member states should have a stronger interests in hiding their positions put forward in the Council from the public than journalists and bloggers from around Europe have in informing the European public?

e) Given that EMSA deals a lot with environmental questions, I would even consider this decision-making process on the reform of EMSA (the reform of which will have consequences for the protection of the maritime environment around Europe) to be considered not just under Regulation 1049/2001 but also under the Aarhus convention/regulation, giving me and the public an even stronger right to know member states' positions.

Is there a reason why you did not consider this request in the light of the Aarhus provisions?

I hope I gave you enough reasons for you to revise your decision that I think is against basic principles of the European Union already enshrined in the 1st article of the EU treaty which says that this should be a Union in which "decisions are taken as openly as possible and as closely as possible to the citizen". I hope the Council is able to live up to this.

Kind regards

Ronny Patz
