CONSEJO DE LA UNIÓN EUROPEA

Bruselas, 20 de febrero de 2009 (24.02)

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5475/09

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NOTA PUNTO "I/A"

del: Grupo "Información"
al: Coreper (2.ª parte)/Consejo

n.º doc. prec.: 5474/09

Asunto: Acceso del público a los documentos
- Solicitud de confirmación 01/c/01/09 presentada por D.ª Eva MORAGA GUERRERO

Adjunto se remite a las Delegaciones un proyecto de respuesta del Consejo a la solicitud de confirmación 01/c/01/09 presentada por D.ª Eva MORAGA GUERRERO; dicho proyecto es el resultado del estudio realizado por el Grupo "Información" en su reunión del 19 de febrero de 2009.

Las Delegaciones finlandesa y sueca señalaron que votarían en contra del proyecto de respuesta e hicieron la siguiente declaración común:

"Dado que, en este caso concreto, el documento ya es accesible al público, no hay ninguna necesidad de divulgarlo en virtud del artículo 4.3, que se refiere a la protección del proceso de toma de decisiones de las instituciones."

Las Delegaciones acordaron por mayoría hacer público el resultado de la votación.
En virtud de lo cual, se invita al Comité de Representantes Permanentes a sugerir al Consejo que en su próxima sesión:

- haga constar como punto "A" su acuerdo sobre el proyecto de respuesta que figura en el anexo de la presente nota, con el voto en contra de las Delegaciones finlandesa y sueca, y

- decida hacer público el resultado de la votación.

El anexo sólo existe en inglés.


2. In its reply dated 17 December 2008, the General Secretariat granted public access to the document, including delegations’ positions but excluding those parts which enable the delegations concerned to be identified. Public access to these parts was refused pursuant to Article 4(3) of the Regulation (protection of the Council’s decision-making process).

3. In her confirmatory request, the applicant claims that none of the arguments given by the General Secretariat of the Council in its initial reply "reasonably explained a) why disclosure of delegations’ names in association with their proposals would seriously undermine the Council’s decision-making process and b) why, according to the General Secretariat, there is not an overriding public interest that might nevertheless justify disclosure of the document concerned". 
4. The Council has examined the above-mentioned document in the light of the applicant's arguments and decided as follows:

5. As indicated above, the document under scrutiny concerns the proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents. The Commission submitted its proposal on 30 April 2008 (COM(2008) 229 final). The proposal is currently under discussion by the two branches of the legislative authority in the framework of the co-decision procedure.

The Working Party on Information, the Council's preparatory body responsible for the proposal, has met several times to carry out a first examination of the proposal. In the framework of these discussions, delegations have put forward preliminary views on the modifications contained in the Commission proposal. These discussions are still in a preliminary stage and no convergence of views has been recorded and no conclusions have been drawn on the issues raised. The written contributions contained in the requested document relate to three particularly sensitive issues in the context of the preliminary discussions within the Council, which have not, until now, been subject of detailed discussions in the Working Party on Information. In view of the early stage of the decision-making process where thorough discussions have not yet taken place on the delicate issues raised in the requested document and a clear approach has not yet emerged on these issues, disclosure of the name of the delegations that have made the proposals contained in the document would adversely affect the efficiency of the Council's decision-making process by compromising the Council's ability to reach an agreement on the dossier, and, in particular, narrow those delegations' room for compromise within the Council.
In fact, the risk of seriously undermining the Council's decision-making procedure is reasonably foreseeable and not purely hypothetical. If it were to be accepted that such documents containing the written position of delegations on particularly sensitive issues were to be disclosed in their entirety in an ongoing decision-making procedure, delegations would be induced to cease submitting their views in writing, and instead would limit themselves to oral exchanges of views in the Council and its preparatory bodies, which would not require the drawing up of documents. This would cause significant damage to the effectiveness of the Council's internal decision-making process by impeding complex internal discussions on the proposed act, and it would also be seriously prejudicial to the overall transparency of the Council's decision-making.

The Council has weighed the public interest relating to the efficiency of its internal decision-making against the public interest in increased openness, which guarantees that the EU institutions enjoy greater legitimacy and are more accountable to the citizens, in particular when they act in their legislative capacity. It was precisely as a result of this balancing that the General Secretariat decided, in reply to the applicant's initial request, to release the contents of the requested document, whilst suppressing the name of the respective delegations. This solution enables, on one hand, citizens to scrutinise, in accordance with the democratic principles, the information which forms the basis of the proposed legislative act under discussion within the Council, and on the other, to preserve the effectiveness of the Council's decision-making process, as explicitly provided for in Article 207(3) TEC.

6. 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.
7. Finally, the Council recalls that this document and any other legislative document relating to
the proposed Regulation will be made available to the public after the final adoption of the act
in accordance with the rules laid down in Article 11(6) of Annex II to the Council's Rules of
Procedure.

8. Taking into account the above, the Council holds its view that, on balance, all possible factors
which would, at the present stage, plead in favour of releasing the document in question in its
entirety are outweighed by the need to protect the Council's decision-making process.
Therefore, the Council confirms the decision of the General Secretariat in reply to the initial
application, whereby it granted, in accordance with Article 4(6) of Regulation 1049/2001,
partial access to document 16338/08, excluding those parts of the document which enable the
dellegations concerned to be identified. Public access to those parts has to be refused pursuant
to Article 4(3), first subparagraph. of the Regulation (protection of the Council’s decision-
making process).