CONSEIL DE L'UNION EUROPÉENNE

Bruxelles, le 7 octobre 2008 (09.10)
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13423/08

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NOTE POINT "I/A"

du: Groupe "Information"
au: Coreper (2ème partie)/Conseil
n° doc. préc.: 13421/08
Objet: Accès du public aux documents
- Demande confirmative 15/c/01/08 présentée par M. Sander SCHUITEMAKER

Les délégations trouveront en annexe un projet de réponse du Conseil, tel qu'il se présente après avoir été examiné par le Groupe "Information" lors de sa réunion du 6 octobre 2008, à la demande confirmative 15/c/01/08 présentée par M. Sander SCHUITEMAKER.

Les délégations finlandaise et suédoise ont indiqué qu'elles voteraient contre le projet de réponse. Elles ont en outre fait les déclarations suivantes:

- FI: "La Finlande souscrit à l'octroi d'un accès partiel. Toutefois, la divulgation aurait pu être plus large, compte tenu notamment de la nature du document qui est assimilable à un document législatif. En outre, la Finlande n'est pas convaincue que l'existence d'un intérêt public supérieur ait été examinée d'une manière appropriée."
- SV: "Outre les parties proposées par le Secrétariat général, il y a lieu de communiquer également le dernier alinéa de la page 2, ainsi que le titre suivi des deux premiers alinéas de la page 4."

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:

- approuve, en point "A" de l'ordre du jour, le projet de réponse figurant à l'annexe du présent document, les délégations finlandaise et suédoise votant contre;

- décide de rendre public le résultat du vote.

L'annexe n'est disponible qu'en anglais

1. The applicant refers to document 8943/07, which is a Presidency note concerning the draft Council Decision adapting the provisions concerning the jurisdiction of the Court of Justice in Title IV of the Treaty establishing the European Community.

2. In its reply dated 19 September 2008, the General Secretariat refused to grant the applicant access to the above-mentioned document pursuant to Article 4(3) of the Regulation (protection of the Council's decision-making process).

3. In his confirmatory application, the applicant argues that at least partial access should be given to the document (e.g. with Member States' names deleted). This would, in his view, reflect both the importance of unimpeded negotiations and the purpose of Regulation (EC) No 1049/2001, which is to give the fullest possible effect to the right of public access to documents. Referring to recital 2 of the Regulation, he claims that it is hard to see why the principle of enabling citizens of the Union to participate more closely in the decision-making process has to be set aside because of the hypothetical risk of an adverse impact on the negotiations. Furthermore, the applicant argues that attention may refocus on this draft now that it is uncertain when or whether the Treaty of Lisbon will enter into force. According to the applicant, provision must consequently be made for informed public discussion of this draft in the Member States, which requires at least partial access to this document.
4. The Council has examined the above-mentioned document in the light of the applicant's arguments and following internal consultations within the relevant department of its General Secretariat. The Council's conclusion is set out below.

5. Document 8943/07 is a Presidency note drafted in preparation of the meeting of the Working Party on the Court of Justice on 22 May 2007. It sets out at its annex a draft Council Decision adapting the provisions concerning the jurisdiction of the Court of Justice in Title IV of the Treaty establishing the European Community.

6. Since September 2006, the competent preparatory body of the Council has met at a number of occasions to examine this draft Decision. However, in spite of the efforts made, no substantial progress has been obtained in the negotiations, given that a number of difficult aspects of this delicate matter still remain to be reconciled.

7. The Council therefore takes the view that the risk that full release of this document would have an adverse impact on the on-going negotiations on this issue is clearly not only hypothetical, as argued by the applicant, but more than likely, as it could impede the proper conduct of the negotiations and compromise the conclusion of an agreement on this sensitive subject. Negotiations on this issue are at a stage where the efficiency of the Council's proceedings would certainly be undermined, if the requested document were to be released in full.

8. Against that background, the Council concludes that the need to protect the Council's ongoing decision-making process, as well as the negotiations concerned, outweighs the applicant's interest in inspecting the above-mentioned document in its entirety. Full access to this document is consequently denied, pursuant to Article 4(3), first paragraph, of the Regulation (protection of the Council's decision-making process).
9. However, pursuant to Article 4(6) of the Regulation, the applicant may have access to the following parts of the document:

- page 1 and
- paragraphs 1-3 on page 2,

which, in the Council's view, are not covered by any of the exceptions laid down in Article 4 of the Regulation. The Council considers that, in respect of those parts of the document which are still withheld, this solution strikes the right balance between the interest of protecting the Institution's decision-making process and the public interest in disclosure. As to the applicant's argument that provision must be made for informed public discussion of this draft in the Member States, the Council holds the view that the solution of partial access as indicated above allows the public to be sufficiently informed on the state of play of the discussions on the issue at hand.

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