



Council of the European Union
General Secretariat

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CM 2496/21

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PROCED**

COMMUNICATION

WRITTEN PROCEDURE

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Subject: PUBLIC ACCESS TO DOCUMENTS
– Confirmatory application No 07/c/01/21
– Outcome of the written procedure initiated by CM 2495/21

Delegations are informed that the written procedure opened by CM 2495/21 of 31 March 2021 was completed on 8 April 2021 and that the majority of delegations agreed to the approval of the Council's reply to the above-mentioned confirmatory application, as set out in document 6418/21.

The joint statement by The Netherlands, Latvia, Finland, Estonia, Denmark and Belgium, and that of Sweden, are reproduced in the annex to this CM.

Statement from The Netherlands, Latvia, Finland, Estonia, Denmark and Belgium

The Netherlands, Latvia, Finland, Estonia, Denmark and Belgium cannot concur with the draft reply to confirmatory application No 07/c/01/21. We believe that there is no reasonably foreseeable and not purely hypothetical risk that full disclosure of the CLS opinion would specifically and actually undermine the institution's ongoing decision-making process, the protection of legal advice and the protection of the public interest as regards the international relations (in light of the case law of the Court of Justice and in particular joined cases C-39/05 P and C-52/05, Kingdom of Sweden and Turco/Council and case C-350/12 P, Council/in 't Veld).

Moreover, in the case that, contrary to the view of the Netherlands, Latvia, Finland, Estonia, Denmark and Belgium, full disclosure would undermine the decision-making process and the protection of legal advice, the Netherlands, Latvia, Finland, Estonia, Denmark and Belgium believe there would be an overriding public interest in full disclosure of the CLS opinion on the nature of the TCA and the exercise of the EU of its competence. Such openness contributes to proving the legitimacy of the decision making process in the Council with regard to the TCA, while reflecting the unusual circumstances under which it has taken place (joined Cases C-39/05 P and C-52/05 and Case C-506/08 P, Sweden/My Travel Group and Commission).

Statement from Sweden

Sweden cannot concur with the draft reply to confirmatory application No 07/c/01/21 that disclosure of Section III (Legal Analysis) chapter A – C p. 13 – 16, 18, 21, 23 – 24 in document 5591/21 would seriously undermine the ongoing decision-making process, or the protection of legal advice or the protection of international relations. Considering the restrictive interpretation of these exceptions by the Court (T-540/15 De Capitani case, C-39/05 and C-52/05 Kingdom of Sweden and Turco/Council and case C-350/12P Council / In't Veld), Sweden believes that it is not sufficiently motivated that there is an actual and concrete risk that disclosure of the aforementioned paragraphs would seriously undermine the institution's ongoing decision-making process, or the protection of legal advice or the protection of international relations and that this risk is reasonably foreseeable and not only hypothetical. Furthermore, Sweden believes there is an overriding public interest in disclosure considering the subject-matter of the document involved and the criticism which the Council has received on this matter in the past.

Sweden can, however, support the Council's draft reply and its grounds for non-disclosure with respect to Section III (Legal Analysis) chapter D – G.
