



CONSEJO DE
LA UNIÓN EUROPEA

Bruselas, 4 de junio de 2009 (09.06)
(OR. en)

10193/09

INF 142
API 76
JUR 247

NOTA PUNTO "I/A"

del: Grupo "Información"
al: COREPER (2.^a parte) y al Consejo

n.º doc. prec.: 10191/09

Asunto: Acceso del público a los documentos
- Solicitud de confirmación 15/c/01/09

Adjunto se remite, a la atención de las Delegaciones, un proyecto de respuesta del Consejo, según resulta del examen efectuado por el Grupo "Información" en su reunión del 3 de junio de 2009, a la solicitud de confirmación 15/c/01/09.

La Delegaciones finlandesa y sueca indicaron que votarían en contra del proyecto de respuesta. Además, dichas Delegaciones formularon las siguientes declaraciones:

FI: *"La divulgación del documento no supone un perjuicio para la protección del interés público por lo que respecta a las relaciones internacionales a tenor de lo dispuesto en el artículo 4.1.a) del Reglamento 1049/2001".*

SE: *"La divulgación del documento no supone un perjuicio para la protección de las relaciones internacionales. Por consiguiente, el documento debería divulgarse en su totalidad."*

La mayoría de las Delegaciones convino en que se hiciera público el resultado de la votación.

En consecuencia, se solicita al Comité de Representantes Permanentes que sugiera al Consejo que, en su próxima sesión:

- haga constar en acta, como punto "A", su aprobación del proyecto de respuesta que figura en el anexo del presente documento, con el voto en contra de las Delegaciones finlandesa y sueca;
- decida publicar el resultado de la votación.

El Anexo solo existe en inglés.

DRAFT
REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION 15/c/01/09
made by e-mail on 20 May 2009,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to document 15375/06

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 2006/683/EC, Euratom - OJ L 285 of 16.10.2006, p. 47) and has come to the following conclusion:

1. The applicant refers to document 15375/06, which was submitted to the Article 133 Committee and contains the final consolidated version of the Minimum Platform on Investment for EU Free Trade Agreements ("FTAs"), as agreed within the framework of the Article 133 Committee.
2. In its reply dated 15 May 2009, the General Secretariat refused to grant the applicant access to the above-mentioned document, pursuant to Article 4(1)(a) of the Regulation (protection of the public interest with regard to international relations).
3. The Council notes that the applicant asks the institution to reconsider its position, stating that the document is required for study and research purposes. The applicant argues that the disclosure of the contents of the Minimum Platform has already occurred, as the document under scrutiny has already been subject of a commentary and observations by a scholar. Moreover, the applicant claims that since the Platform is used only as a basis for the Commission's negotiating mandates and is described as a "minimum", its disclosure cannot in practical terms undermine the EU's position in individual negotiations with third countries.

4. The Council has thoroughly examined the document and carried out internal consultations within its General Secretariat to ascertain the applicability of the above-mentioned exception to the retained document. Following these consultations, the Council has come to the conclusion set out below.
5. Notwithstanding the applicant's interest in the document for academic study purposes, the Council considers that it is not possible to grant the applicant privileged access, since the Institution is obliged, when releasing a document to the public, to do so *erga omnes*.¹
6. As regards the applicant's argument that reference has been made by scholars to the substance of the document under scrutiny, it should be recalled that the fact that the document in question is mentioned in specialist literature does not constitute a sufficient ground to conclude that this document was officially released by the Council. In fact, the document has never been made public by the Council. The decision-making process for processing applications for public access to documents, as provided for in Articles 7 and following of Regulation 1049/2001 and in Annex II to the Council's Rules of Procedure, should not be prejudiced by the unauthorised disclosure, in violation of the Regulation, of the full text of the documents.
7. Document 15375/06 contains the final consolidated version of the Minimum Platform on Investment for EU Free Trade Agreements ("FTAs"). This Minimum Platform is used as a basis for negotiations on trade in services and establishment (i.e. investment) in practically all EU bilateral trade negotiations. The negotiating mandates authorising the Commission to negotiate with third parties contain clear reference to the Platform; in some cases important parts of the Platform may be reproduced. The Platform thus forms an essential part of the negotiating mandates and can therefore not be considered as a solely model text. The applicant's argument that the document would only be used as a minimum basis for the negotiating mandates is in the Council's view thus not valid in this case.

¹ Article 10(2) of Annex II to the Council's Rules of Procedure, OJ L 285 of 16.10.2006, p. 63.

In the Council's view, release of document 15375/06 to the public would enable the negotiating partners of the EU to assess the measure of its willingness to compromise. This would not only prejudice the EU's position in its current trade negotiations but would also have an adverse effect in future negotiations. For these reasons, public access to the document must be denied on the basis of Article 4(1)(a), third indent of the Regulation (protection of the public interest as regards international relations).

8. Furthermore, it is not possible to grant partial access to the document as foreseen in Article 4(6) of the Regulation since its content forms an inseparable whole.
