



**RAT DER
EUROPÄISCHEN UNION**

**Brüssel, den 15. Juli 2011 (19.07)
(OR. en)**

12450/11

**INF 121
API 65
JUR 342**

I/A-PUNKT-VERMERK

der Gruppe "Information"

für den AStV (2. Teil)/Rat

Nr. Vordok.: 12449/11

Betr.: Zugang der Öffentlichkeit zu Dokumenten
– Zweitantrag Nr. 18/c/01/11

Die Delegationen erhalten in der Anlage den Entwurf einer Antwort des Rates auf den Zweitantrag Nr.18/c/01/11, wie er sich aus der Prüfung durch die Gruppe "Information" in ihrer Sitzung vom 15. Juli 2011 ergibt.

Die schwedische Delegation hat erklärt, dass sie gegen den Antwortentwurf stimmen werde, und hat folgende Erklärung abgegeben:

SE: *"Schweden begrüßt den Vorschlag, die angeforderten Dokumente teilweise freizugeben. Allerdings verweisen diese Dokumente auf allgemeine Grundsätze, die bereits öffentlich bekannt sind. Die Dokumente können daher vollständig freigegeben werden."*

Die Mehrheit der Delegationen stimmte der Veröffentlichung des Abstimmungsergebnisses zu.

Der Ausschuss der Ständigen Vertreter wird daher gebeten, dem Rat vorzuschlagen, dass er auf seiner nächsten Tagung

- dem in der Anlage enthaltenen Antwortentwurf – gegen die Stimme der schwedischen Delegation – unter Teil A der Tagesordnung zustimmt und
- beschließt, das Abstimmungsergebnis zu veröffentlichen.

Die Anlage liegt nur in englischer Sprache vor.

DRAFT

REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION No 18/c/01/11,
made by e-mail on 4 July 2011,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents 7008/09, 7008/09 COR 1 and
10491/1/09 REV 1 (RESTREINT UE)

The Council has considered this confirmatory application under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43) (hereafter "Regulation (EC) No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. The applicant refers to documents 7008/09, 7008/09 COR 1 and 10491/1/09 REV 1 (RESTREINT UE). Document 7008/09 and its COR 1¹ (hereafter together referred to as document 7008/09) contain a note from the Commission and the General Secretariat of the Council addressed to delegations and containing a Reflection paper on Political Clauses in agreements with third countries. Document 10491/1/09 REV 1 (RESTREINT UE) is a "I" Item Note from the General Secretariat of the Council to COREPER concerning a common approach on the use of political clauses and containing in its Annex such a common approach.
2. In its reply dated 24 June 2011, the General Secretariat refused public access to the documents pursuant to Article 4(1)(a), third indent (protection of the public interest with regard to international relations) and the second subparagraph of Article 4(3) (protection of the decision-making process of the Council) of the Regulation.
3. In his confirmatory request made on 4 July 2011, the applicant contends that the requested documents had been referred to in publicly available documents and were of public interest.

¹ Document 7008/09 COR 1 is a corrigendum to this note.

4. The Council has examined the above-mentioned documents in the light of the applicant's arguments and has come to the following conclusion:
5. Document 7008/09 is a Reflection paper on Political Clauses in agreements with third countries which was drafted as an internal reference document in preparation for the adoption of a common approach on the use of political clauses by COREPER and was not intended to be released to the public or the international stage. The Council would underline that political clauses provide a set of policy tools which are used by the European Union to address some of its key policy objectives in the realm of external relations. The requested document contains analyses and assessments of the state of play regarding the use of such clauses in relation to third countries, focussing on an assessment of problems encountered and on suggestions for possible improvements.
6. Document 10491/1/09 REV 1 (RESTREINT UE) is a "I" Item Note from the General Secretariat of the Council to COREPER, that is an internal document drafted following discussions in COREPER in March 2009 on the basis of document 7008/09. In its Annex, this document sets out a common approach agreed by COREPER on the future use of political clauses. That result was reached on the basis of document 7008/09 and is linked to the content of that reflexion paper. The common approach has horizontal importance for ongoing and future negotiations of the EU with third countries in areas that are of particular international sensitivity. For that reason, it has been classified "RESTREINT UE".
7. Document 7008/09 and Document 10491/1/09 REV 1 are intrinsically linked. The former document prepares and provides a set of policy options that are reflected in the positions described latter document. Knowledge of the content or structure of document 7008/09 would thus allow for conclusions to be drawn as regards the content of the common approach. Such knowledge of the content of the common approach could be used to influence the political decision-making process regarding the use of political clauses in international agreements. Hence full release of the requested documents to the public would risk affecting sensitive diplomatic relations and mutual confidence between the EU and third countries. Furthermore, it risks negatively affecting the negotiating position of EU and its Member States vis-à-vis third countries in ongoing and future negotiations.

8. The applicant contends that the requested documents have been referred to in publicly available documents and are thus of public interest. In this regard it must be recalled that the exception provided for in Article 4(1)(a), third indent (protection of international relations), is mandatory and does not comprise any “overriding public interest” clause. In consequence, once it is established that the requested document falls within the protected sphere of the public interest as regards international relations and that the protection of the invoked interest would be undermined if the documents were to be disclosed, the institution is obliged, by Regulation (EC) No 1049/2001, to refuse public access.
9. The Council therefore confirms the reply given in the initial phase to refuse full public access to documents 7008/09, 7008/09 COR 1 and 10491/1/09 REV 1 (RESTREINT UE) pursuant to Article 4(1)(a), third indent, of the Regulation (protection of the public interest as regards international relations).
10. The Council has thoroughly examined the possibility of granting partial access to the documents in application of Article 4(6) of the Regulation. As regards document 10491/1/09 REV 1 (RESTREINT UE), partial public access is given to the cover note setting out the deliberation process in the Council (pages 1 and 2 of the document). A partially declassified version of document 10491/1/09 REV 1 (RESTREINT UE) which includes this cover note is contained in document 10491/1/09 REV 1 EXT 1. However, public access must be refused to the entire Annex of document 10491/1/09 REV 1 (RESTREINT UE) (pages 3 to 6 of the document), since the exception relating to the protection of international relations applies to the entire content of that Annex.

As regards document 7008/09, partial public access is given to the introductory paragraph on page 1 of the document, but must be refused for the rest of the document. In making that assessment, the Council took into due consideration that document 7008/09 assembles inter alia elements of factual and public information. It remains, however, that those elements, including their selection and composition, are intrinsically linked to the structure and the content of the reflexion paper. Their release would therefore permit to draw conclusions on the protected content of document 7008/09 and COR 1, i.e. the assessment and the suggestions made, and ultimately on the content of the common approach itself.

Consequently, the protection of the public interest as regards international relations requires protection of document 7008/09 and its COR 1 in their entirety, except for the introductory paragraph of document 7008/09.
