



**KUNSILL
TAL-UNJONI EWROPEA**

**Brussell, 18 ta' Lulju 2011 (19.07)
(OR. en)**

12525/11

**INF 124
API 68
JUR 350**

NOTA PUNT "I"

minn : Grupp ta' Hidma dwar l-Informazzjoni

lil : Coreper (parti 2)

Nru dok. preċ.: 12524/11

Sugġett: Aċċess pubbliku għad-dokumenti

- Applikazzjoni konfermatorja Nru 19/c/01/11

Id-delegazzjonijiet isibu meħmuż abbozz ta' twegiba mill-Kunsill għall-applikazzjoni konfermatorja Nru 19/c/01/11, kif tinsab wara l-eżami mill-Grupp ta' Hidma dwar l-Informazzjoni fil-laqgħa tiegħu tal-15 ta' Lulju 2011.

Id-delegazzjoni Daniża, Finlandiża u dik Svediża għamlu d-dikjarazzjoni li ġejja:

DK, FI u SE: *"DK, FI u SE jistgħu jaqblu mal-eżitu propost fl-abbozz ta' twegiba u għalhekk jivvotaw iva. Madankollu, aħna nħossu li r-raġunar fil-paragrafi 9 u 10 huwa ta' natura wisq ġenerali minhabba li ma jirrelatax speċifikament u esklużivament mad-dokumenti mitluba mill-applikant."*

Il-maġġoranza tad-delegazzjonijiet qablet li jiġi ppubblikat ir-riżultat tal-votazzjoni.

Fid-dawl tal-fatt li ma hemm l-ebda laqgħa ohra tal-Kunsill f'Lulju, u b'kont meħud tal-limiti taż-żmien imposti mill-Artikolu 8 tar-Regolament (KE) Nru 1049/2001 tal-Parlament Ewropew u tal-Kunsill dwar l-aċċess pubbliku għad-dokumenti tal-Parlament Ewropew, tal-Kunsill u tal-Kummissjoni¹ rigward l-ipproċessar ta' applikazzjonijiet konfermatorji, il-Kumitat tar-Rappreżentanti Permanenti huwa għaldaqstant mistieden, bħala punt "I" fil-laqgħa tiegħu li jmiss, jiddeċiedi b'unanimità, li juża l-proċedura bil-miktub biex japprova l-abbozz ta' twegiba mnizzla fl-Anness għal dan id-dokument.

L-Anness hu disponibbli bl-Ingliš biss.

¹ ĠU L 145, tal-31.5.2001, p. 43.

DRAFT**REPLY ADOPTED BY THE COUNCIL ON****TO CONFIRMATORY APPLICATION No 19/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 Fiche 0961/jp, 13084/95, SN 3226/3/99 REV 3, SN 4022/99,
8599/99 and 8599/99 ADD 1**

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 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 Fiche 0961/jp, 13084/95, SN 3226/3/99 REV 3, SN 4022/99, 8599/99 and 8599/99 ADD 1. Those documents have the following contents:
 - Document "Fiche 0961/jp" is a letter from Mr Fernandez-Fabregas, a Director-General in the General Secretariat of the Council, to Mr Baron Crespo, the President of the European Parliament, and contains in its Annex an information note setting out the substance of the negotiating directives for the first Framework Cooperation Agreement between the EEC and Chile, adopted by the Council on 16 July 1990;
 - document 13084/95 is an "A" Item Note from the Permanent Representatives Committee to the Council and contains draft negotiating directives for a new Framework Cooperation Agreement between the European Community and Chile;
 - document SN 3226/3/99 REV 3 contains negotiating directives for an Association Agreement between the European Community and its Member States, on the one part, and Chile, on the other part;
 - document SN 4022/99 replaces certain parts of the negotiating directives for an Association Agreement with Chile set out in SN 3226/3/99 REV 3 as well as those for an Association Agreement between the EU and Mercosur set out in SN 3225/3/99 REV 3; and

- document 8599/99 contains the modalities for the negotiations on the Political and Economic Association Agreement with Chile as well as statements of Member States regarding the negotiating directives; document 8599/99 ADD 1 contains two more such statements.
2. In its reply dated 15 June 2011, the General Secretariat refused public access to the documents pursuant to Article 4(1)(a), third indent, of Regulation No 1049/2001 (protection of the public interest with regard to international relations).
 3. In his confirmatory request made on 4 July 2011, the applicant indicates that he needs the documents for academic research purposes. He contests that full release of the documents under scrutiny could be used in a way to gauge prospects of the on-going negotiations and would compromise the EU's position in future negotiations, as indicated in the General Secretariat's reply. He argues that negotiating directives are not a "wish list" assembled by the EU prior to contacts with its negotiating partner but already include the latter's demands expressed in exploratory talks with the Commission. Therefore such negotiating directives could not be used to gauge the success of negotiations between the parties concerned. Furthermore, he argues that it is not possible for a member of the public to know whether a point which shows in the negotiating directives has been requested by the EU or its negotiating partner.

In addition, the applicant states that he is only interested in the way the Commission and the Council co-operate in negotiations and who manages, and under which conditions, to shape them. He therefore suggests that those parts of both the draft and the adopted negotiating directives be identified which show the points either included in the draft negotiating directives and later removed by the Council or which were not included in the draft negotiating directives but were later inserted by the Council. According to him, partial access given to such parts of the negotiating directives would suffice to allow for the continuation of his academic work, in case the Council decides that full release of the documents is not possible.

4. The Council has examined the above-mentioned documents in the light of the applicant's arguments and has come to the following conclusions:

The international background

5. The EEC signed a first Framework Cooperation Agreement with Chile in December 1990, thereby officially restoring political relations after the re-establishment of democracy in that country in 1990². This Agreement was replaced by a second Framework Cooperation Agreement, signed in June 1996³. In 2002, the EU and Chile signed an Association Agreement which is in force since 1 March 2005⁴.

Parallel to those bilateral negotiations with Chile, the Union and Mercosur opened, in 2000, negotiations with a view to conclude an Association Agreement. However, the latter negotiations were suspended in 2004 due to differences between the parties. In the meantime, that political process has regained momentum and in May 2010 negotiations have been relaunched. Since then, there have been five negotiating rounds with Mercosur but it seems that the resolution of all outstanding issues will still require extensive further negotiations before an agreement is reached.

The requested documents

6. The Council considers that full release to the public of the requested documents would undermine the protection of the public interest as regards international relations, third indent of Article 4(1)(a) of Regulation 1049/2001, in several ways.
7. To begin with, the negotiating directives concerned are still of concrete relevance for current international relations. As described above under point 5, negotiations between the EU and Mercosur have resumed in 2010 in view of negotiating an Association Agreement. The similar content of past negotiations on such an Agreement and on the said bilateral agreements between the EU and Chile is still relevant for today's negotiations. Disclosure would hence make public aspects of the strategic objectives the EU intends to achieve in current international negotiations and would enable the negotiating partners of the EU to assess the measure of its willingness to compromise.

² OJ L 79, 26.3.1991, p.1.

³ OJ L 209, 19.8.1996, p. 5.

⁴ OJ L 352, 30.12.2002, p. 1.

8. Moreover and from a more general perspective, the Council would underline that divulgation of the requested negotiating directives would negatively affect the climate of trust between the EU and its international partners. Release of the Council's negotiating directives would permit to assess the distance between the objectives as stated therein and the results achieved in international negotiations. It would become possible to assess how far to EU was able to achieve its objectives vis-à-vis its international partner. If international partners had to accept such a risk this would negatively affect their attitude towards negotiations with the EU.
9. In addition, divulgation of the negotiating directives and their Commission drafts would make known the internal decision-making dynamics of the EU to the international community, thus weakening the EU's international position vis-à-vis its international partners. This also holds true as regards the statements of Member States and the modalities for negotiations contained document 8599/99 and its ADD 1.
10. The Council would add that it does not agree with the applicant's argument that negotiating directives could not be used to gauge the success of negotiations between international parties. First, the possibility for the Commission to conduct exploratory talks with third parties does not imply whether or to what extent the draft directives would already include demands of such third parties. Second, the appearance alone of success of the Union on a given topic in international negotiations could cause political and diplomatic complications for its international partners. Finally and notwithstanding the pertinence of applicant's argument, it remains in any case that independently of the Commission's approach as regards the drafting of the negotiating directives, disclosure of the negotiating directives would reveal to the EU's negotiating partners the strategic objectives the EU intends to achieve in the on-going and similar future international negotiations.
11. Finally, the Council wishes to draw the applicant's attention to the fact that, when the Institution releases a document, it is obliged to do so *erga omnes*.⁵ Privileged access for academic purposes, such as suggested by the applicant, is therefore not possible.

⁵ Article 10(2) of Annex II to the Council's Rules of Procedure, OJ L 285 of 16.10.2006, p. 63.

12. For all of these reasons, full public access to the documents under scrutiny, except for document "Fiche No 0961/jp", 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). As regards document "Fiche No 0961/jp", the Council has concluded that this document is not covered by the exception referred to in point 6 above and can be released in its entirety.
13. The Council has also examined, pursuant to Article 4(6) of Regulation 1049/2001, the possibility of granting partial access to the requested documents and has come to the following conclusion:
- As regards documents SN 3226/3/99 REV 3 and SN 4022/99, there is no room for granting partial access, since the exception of the protection of international relations applies to these documents in their entirety;
 - regarding document 13084/95, the Council confirms the partial access granted to page 1 of the document in the initial phase by its General Secretariat;
 - concerning document 8599/99 ADD 1, there is no room for granting partial access, since the exception of the protection of international relations applies to this document in its entirety;
 - regarding document 8599/99, the Council confirms the partial access granted to pages 1 and 2 of the document in the initial phase by the General Secretariat. Furthermore, the Council has decided that partial access may be given to the following supplementary parts of the document which are not covered by the exception, namely: point 5 on page 3 of Annex I (a statement by the Council and the Commission concerning Title XII); and the statement by the Council and the Commission in Annex II.
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