



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 December 2009

16467/09

**INF 301
API 143
JUR 486**

COVER NOTE

from :	General Secretariat of the Council
to :	Working Party on Information
Subject :	Public access to documents
	- Confirmatory application made by Ms Liana COZIGOU (31/c/01/09)

Delegations will find attached:

- a request for access to documents sent to the General Secretariat of the Council on 20 October 2009 and registered on the same day (Annex 1).
- a request for access to documents sent to the General Secretariat of the Council on 7 November 2009 and registered on the same day (Annex 2).
- a reply from the General Secretariat of the Council dated 16 November 2009 (Annex 3).
- a reply from the General Secretariat of the Council dated 20 November 2009 (Annex 4).
- confirmatory application dated 20 November 2009 and registered on the same day (Annex 5).

[E-mail message sent on 20.10.2009 - 12:38]

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application

This electronic form has been submitted in EN

Title/Gender: Ms - Ms

Family Name: cozigou

First Name: liana

E-Mail: lcozigou@gmail.com

Occupation: student at Université Libre de Bruxelles

On behalf of: Tutor of thesis: Ms Bribosia at the institute of european studies (ULB - Bruxelles)

Address: Rue du coq 130 1180 Uccle Belgium

Telephone:

Mobilephone: 0032476723442

Fax:

Requested document(s): Dear Sir, Dear Madam,

The needed documents concern the "Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation" and those are the one in the register of the council which are not available:

14896/08 (29-10-2008),

14483/08 (20-10-2008),

12071/08 (24-07-2008).

If any other more recent documents are available please forward them to me. The intention of the swedish presidency of bringing this non discrimination directive further has been underlined and therefore, I would like to know if any "avis" or decision was made since June.

The use of those documents will be purely academic.

Thanking you,
Liana Cozigou

1st preferred linguistic version: FR - French

2nd preferred linguistic version: EN - English

[E-mail message sent on 7.11.2009 - 15:43]

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application

This electronic form has been submitted in **EN**

Title/Gender: Ms - Ms

Family Name: Liana

First Name: Cozigou

E-Mail: lcozigou@gmail.com

Occupation: student at ULB - IEE

On behalf of: Institut of the European studies - Ms E. Bribosia Université Libre de Bruxelles 1050 Ixelles Belgique

Address: Rue du Coq 130
1180 Uccle
Belgium

Telephone: 0476723442

Mobilephone: 0476723442

Fax: n/a

Requested document(s): Document Number: 8321/09

Subject: Proposal for a Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (doc. 12892/2/08 REV 2) - Legal basis

1st preferred linguistic version: FR - French

2nd preferred linguistic version: EN - English



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 November 2009

GENERAL SECRETARIAT

Directorate-General F
Press
Communication
Transparency

- Access to Documents/
Archives

RUE DE LA LOI, 175
B – 1048 BRUSSELS
Tel: (32 2) 281 67 10
Fax: (32 2) 281 63 61
E-MAIL:

access@consilium.europa.eu

Ms Liana Cozigou

e-mail:
lcozigou@gmail.com

09/2151-mj/jj

Dear Ms Cozigou,

Your request of 20 October 2009 for access to documents 14896/08, 14483/08, 12071/08 and "*other more recent documents*" has been registered by the "Access to Documents" unit. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (Official Journal L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2006/683/EC, Euratom, Official Journal L 285, 16.10.2006, p. 47). On 11 November 2009, the time-limit for replying to your application was extended by 15 working days. Having examined the request, the General Secretariat has come to the following conclusion:

You may have access to documents **14483/08, 14009/09 and 15320/09**. Document 14483/09 is enclosed in French. Documents 14009/09 and 15320/09 are only available in English.

Document **12071/08** contains an outcome of proceedings from the Working Party on Social Questions on 18 July 2008 - *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*. No decision has yet been taken on the matter.

You may have access to the content of the document, including delegations' positions, but excluding those parts which enable the delegations concerned to be identified.

The General Secretariat considers this to be a good compromise between protection of the decision-making process of the Council, on the one hand, and public interest in disclosure, on the other. This allows you to be informed of the arguments raised during discussion concerning an issue on which the Institution has not yet taken a decision.

Nevertheless, the General Secretariat considers that protection of the institution's decision-making process outweighs possible public interest in identifying the delegations whose positions are set out in the document.

In the framework of preliminary discussions and negotiations within the Council's preparatory bodies, it is essential that delegations are able to express their views freely so that the Council can find compromise solutions and achieve progress on delicate questions.

Disclosure at this stage of those parts of the document which allow identification of the delegations that have adopted positions on the subject still under discussion, would jeopardise this process, since it could seriously narrow delegations' room for manoeuvre to review their positions in the light of arguments put forward during discussion. The General Secretariat is of the opinion that disclosure of these parts of the document could seriously undermine the Council's decision making process. Accordingly, pursuant to Article 4(3), first subparagraph of the Regulation (protection of the Council's decision-making process), the General Secretariat is unable to grant you access to these parts of the document.

However, pursuant to Article 11(6) of Annex II to the Council's Rules of Procedure, this document and any other legislative document relating to this Directive shall be made available to the public in full after the final adoption of the act, unless their content is covered by Article 4(1), (2) or (3), second subparagraph, of Regulation (EC) No 1049/2001.

Document **14896/08** is an Opinion of the Legal Service on the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. It comprises an analysis of legal questions relating to this proposal.

The requested document contains legal advice, with the exception of its introductory paragraph and paragraphs 1 to 6. The legal advice was given in the context of an ongoing legislative procedure currently under examination within the Council.

In view of the fact that the decision-making process is at an early stage in the Council and a clear approach has not yet emerged on the legal issues raised by the Legal Service, disclosure of the opinion of the Legal Service at this early stage would adversely affect the efficiency of negotiations by impeding internal discussions of the Council on the legality of the proposed act and would compromise the conclusion of an agreement on the dossier.

In addition, if the legal advice were made public prematurely, it could lead the Council to take into account the risk of a possible disclosure in the future and decide not to request written opinions from its Legal Service. This would prejudice the Council's ability to carry out its tasks, by depriving it of an important instrument which ensures the compatibility of its acts with Community law and hence it would undermine the Council's interest in requesting and receiving frank, objective and comprehensive legal advice.

Taking into consideration the sensitivity of the dossier at this early stage of the legislative process, disclosure of the document would prejudice two of the protected interests under Regulation 1049/2001, notably the protection of legal advice under Article 4(2) second indent and the institution's ongoing decision-making process under Article 4(3) first subparagraph of the Regulation. The principle of transparency which underlies the Regulation does not, in the present case, override the above two interests so as to justify disclosure of the document.

In the light of the above, the General Secretariat is unable to accede to your request for full access to document 14896/08 on the basis of Article 4(2), second indent (protection of legal advice) and Article 4(3) first subparagraph (protection of the institution's ongoing decision-making process) of Regulation 1049/2001.

However, pursuant to Article 4(6) of that Regulation, you may have access to paragraphs 1 to 6 of the document, since those are not covered by any of the exceptions foreseen under the Regulation.

According to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply¹.

Yours sincerely,

For the General Secretariat

Ramón Jiménez Fraile

Enclosures

¹ Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

*Directorate-General F
Press
Communication
Transparency*

*- Access to Documents/
Archives*

RUE DE LA LOI, 175
B – 1048 BRUSSELS
Tel: (32 2) 281 67 10
Fax: (32 2) 281 63 61
E-MAIL:

access@consilium.europa.eu

Brussels, 20 November 2009

Ms Liana Cozigou

**e-mail:
lcozigou@gmail.com**

ref.: 09/2331-mj/mf

Dear Ms Cozigou,

Your request of 7 November 2009 for access to document 8321/09 was registered on 9 November 2009 by the "Access to Documents" unit. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (Official Journal L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2006/683/EC, Euratom, Official Journal L 285, 16.10.2006, p. 47) and has come to the following conclusion:

Document **8321/09** comprises an opinion of the Council Legal Service on a Proposal for a Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities.

The requested document contains legal advice. The legal advice relates to an ongoing legislative procedure.

Firstly, the legal advice contained in the document is particularly large in scope, going beyond the specific legislative process, since it examines the scope of the various Treaty legal bases proposed by the Commission for the decision on the conclusion of the Convention. Were the document to be released to the public, there is a risk that the legal advice would be taken out of its specific context and be applied in other areas where the question on the scope of the examined legal bases is raised. It could lead the Council to take into account the risk of a possible disclosure in the future and decide not to request opinions from its Legal Service. This would prejudice the Council's ability, in general, to carry out its tasks, by depriving it of an important instrument which ensures the compatibility of its acts with Community law and hence it would undermine the Council's interest in requesting and receiving frank, objective and comprehensive legal advice.

Furthermore, and in view of the fact that the decision-making process is currently ongoing, disclosure of the opinion of the Legal Service would adversely affect the efficiency of negotiations by impeding internal discussions of the Council on the legality of the proposed act and would compromise the conclusion of an agreement on the dossier.

Under those circumstances, the General Secretariat is unable to grant you full access to this document, since the disclosure of the document would prejudice two of the protected interests under Regulation 1049/2001, notably the protection of legal advice under Article 4(2) second indent and the institution's ongoing decision-making process under Article 4(3) first subparagraph of the Regulation. As regards the existence of an overriding public interest in disclosure, the General Secretariat considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above two interests so as to justify disclosure of the document.

However, pursuant to Article 4(6) of the Regulation, you may have access to those parts of the document, which are not covered by any exception under the Regulation.

Yours sincerely,

For the General Secretariat

Ramón Jiménez Fraile

Enclosure

[Confirmatory application sent by e-mail on 20 November 2009 - 15:56]

Dear Sir,

I would like to repeat my request in view to access the concerned documents. Being a student in my final year, those documents are of extreme importance. In fact, they are the core of my final paper (thesis) at university as I am examining the new proposal of directive regarding the implementation of the general ban of discriminations. The use of those documents will be strictly academical. Being a public law student, you can imagine the importance of the legal advices for my work.

Please reconsider this demand and feel free to publish it.

Thanking you,

Yours faithfully,

[Confirmatory application sent by e-mail on 20 November 2009 - 16:00]

Sir,

I would be grateful if you would reconsider my request. Since my dissertation relates to the proposal for a Directive aimed at a general prohibition of discrimination, I must stress the importance of these Council texts in enabling me to further my analysis. The use of these documents will be strictly academic. As a law student, I therefore restate my request, particularly as regards the importance of the Council's legal opinions on this question.

I have no objection to the publication of this request for reconsideration.

(Complimentary close)
