Europos Sąjungos
Taryba

Briuselis, 2022 m. gegužės 6 d.
(OR. fr, en)

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LIMITE

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OMBUDS 10
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INST 148

PRANEŠIMAS DĖL „I/A“ PUNKTO

nuo:	Tarybos generalinio sekretoriato
kam:	Nuolatinių atstovų komitetui / Tarybai
Ankstesnio dokumento Nr.:	6712/22; 8087/22
Dalykas:	Skundas 717/2021/DL, adresuotas Europos ombudsmenui. Europos ombudsmeno rekomendacija. Atsakymo patvirtinimas

1. 2022 m. balandžio 28 d. Informavimo darbo grupės posėdyje delegacijos išnagrinėjo Tarybos atsakymo į Europos ombudsmeno rekomendaciją dėl skundo 717/2021/DL projektą (išdėstytą dokumente 8087/22) ir susitarė dėl jo, NL, BE, DK, EE, LV, FI ir SE delegacijoms balsuojant prieš.

2. Todėl Nuolatinių atstovų komiteto prašoma pasiūlyti Tarybai kitame posėdyje:

   - darbotvarkės A punktu patvirtinti priede išdėstytą atsakymą;

   - nuspręsti paskelbti šio pranešimo papildyme pateiktus delegacijų pareiškimus ir balsavimo rezultatus;

DRAFT REPLY

Brussels, XXX

Ms Emily O'Reilly
European Ombudsman
1, Avenue du Président Robert Schuman
B.P. 403
F-67001 Strasbourg Cedex

Subject: Your letter of 24 February 2022 concerning the complaint 717/2021/DL – Recommendation

Dear Ms O'Reilly,

Thank you for your letter of 24 February 2022 concerning the recommendation to the Council of the European Union ("Council") in the complaint 717/2021/DL to grant the widest possible access to a legal opinion on the Trade and Cooperation Agreement between the EU and the European Atomic Energy Community, on the one side, and the United Kingdom of Great Britain and Northern Ireland, on the other side ("TCA") ("document 5591/21").

The Council confirms that the parts of the legal opinion contained in document 5591/21 which were not released before[1] remain sensitive.

The factual situation surrounding this legal opinion did not change since our response to your proposal for a solution, provided by letter of 15 November 2021, and there are no new circumstances that would allow the Council to grant broader access to the legal opinion in question.

[1] In the reply to the initial request, the General Secretariat of the Council (GSC) granted access to paragraphs 1 to 3, to the first two sentences of paragraph 4, to paragraphs 5 and 8, to the first sentence of paragraph 9 as well as to paragraph 11 of the opinion. Access to the remaining parts of the document was refused pursuant to the third indent of Article 4(1)(a) and Articles 4(2) and (3) of Regulation (EC) No 1049/2001. In the response to the confirmatory application, the Council confirmed that access to the parts of the opinion were refused pursuant to the third ident of Article 4(1) (a) and to the second indent of Article 4(2) and to the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

Therefore, while the Council has taken into account that the TCA has entered into force since the response to the confirmatory application was adopted, further access to the legal opinion would undermine the third indent of Article 4(1)(a) (protection of international relations) and the second indent of Article 4(2) (the protection of legal advice) for the reasons explained in the response to the confirmative application and the letter of 15 November 2021.

The Council also reiterates that the legal opinion contained in document 5591/21 relates to a decision-making process of non-legislative nature, the negotiation and conclusion of an international agreement. The Council was therefore not acting in its legislative capacity[2].

As mentioned in the response to the confirmative application, documents drawn up in the framework of the negotiation and conclusion of an international agreement such as document 5591/21 are not subject to the same breadth of access to documents as the legislative activities of an EU institution. More particularly, the Court has held that public participation in the procedure relating to the negotiation and the conclusion of an international agreement, which falls within the domain of the executive, is necessarily restricted in view of the legitimate interest of the negotiations[3].

In addition, the arguments put forward in the response to the confirmative application and the letter of 15 November 2021 were not questioned by the General Court in case T-252/19 *Pech* v *Council*,[4] to which you refer in your recommendation. This case, which is under appeal, concerns a legal opinion of the CLS which was issued in the context of a legislative process, not in the process of the conclusion of an international agreement. There is therefore a substantive difference between that case and the type of procedure (i.e. non-legislative procedure) in which the legal opinion at the core of this complaint was issued. Additionally, the exception of the third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001 (the protection of international relations) was not raised in the administrative proceedings leading to the case T-252/19 *Pech* v *Council*. In any event, the content of the parts of the legal opinion which were not disclosed to the complainant are still sensitive as explained above.

On this basis, the Council concludes that no further access could be granted to the legal opinion contained in document 5591/21.

Yours sincerely,

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[2] See Case T-529/09 *Sophie in 't Veld* v *Council*, EU:T:2012:215 paragraph 88.
[3] See Case T-301/10 *Sophie in 't Veld* v *Commission*, EU:T:2013:135, paragraph 120, and Case T-529/09 *Sophie in 't Veld* v *Council*, EU:T:2012:215 paragraph 88.
[4] Case T-252/19 *Pech* v *Council*, EU:T:2021:203.