

Bruselj, 15. junij 2015  
(OR. en)

8981/15

LIMITE

INF 82  
API 46

**DOPIS O TOČKI POD „I/A“**

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Pošiljatelj: Delovna skupina za informiranje  
Prejemnik: Odbor stalnih predstavnikov (2. del)/Svet  
Št. predh. dok.: 8980/15  
Zadeva: Dostop javnosti do dokumentov  
– potrdilna prošnja št. 09/c/01/15

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V prilogi vam pošiljamo osnutek odgovora Sveta na potrdilno prošnjo št. 09/c/01/15, ki ga je delovna skupina odobrila 15. junija 2015.

Delegacije se strinjajo z objavo izida glasovanja.

Odbor stalnih predstavnikov naj zato Svetu predlaga, da na naslednji seji:

- kot točko pod „A“ soglaša z osnutkom odgovora, ki je priložen temu dokumentu, in
- sklene, da se izid glasovanja objavi.

Priloga je na voljo le v angleškem jeziku.

**REPLY ADOPTED BY THE COUNCIL ON 23 June 2015  
TO CONFIRMATORY APPLICATION 09/c/01/15,  
made by email on 12 May 2015,  
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,  
for public access to documents 8381/07 and 7191/10**

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 referred to as "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:
2. The applicant requests document 8381/07, which is A item note from the Permanent Representatives Committee to the Council containing draft negotiating directives for Association agreements with the Andean Community and its member countries and document 7191/10 which is an outcome of proceedings of the Trade Policy Committee (Deputy Members) meeting on 5 March 2010. As regards document 7191/10, the applicant makes it clear that she is interested only in points concerning Free Trade Agreement with Colombia meaning point 2.3. EU-Andean countries: debrief on the 9th round of negotiations with Peru and Colombia (22-26 February 2010, Brussels).

3. In its reply dated on 11 May 2015, the General Secretariat of the Council did not grant further access to already partially accessible documents pursuant to the third indent of Article 4(1)(a) protection of the public interest with regard to international relations) of the Regulation No 1049/2001.
4. In the confirmatory application dated 12 May 2015, the applicant asks the Council to reconsider this position. The applicant does not provide specific arguments in support of the confirmatory application.
5. The Council has carefully considered the confirmatory application. Having thoroughly examined the requested documents and carried out internal consultations with the relevant department of its General Secretariat, the Council has come to the conclusion set out below.

*Applicable exceptions to both documents: protection of the public interest as regards international relations and the Council's decision-making process*

6. Based on their content, as set out above, the requested documents come within the remit of the exceptions of protection of the public interest as regards international relations (Article 4(1)(a) third indent) and the Council's decision-making process (Article 4(3), first subparagraph).

7. At the outset, the General Secretariat recalls that, according to the established case law of the Court of Justice, the public interest exceptions laid down in Article 4(1)(a) of Regulation No 1049/2001 are subject to a particular regime if compared to the other exceptions included in Article 4.
8. On the one hand, "the Council must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions relating to the public interest provided for in Article 4(1)(a) of Regulation (EC) No 1049/2001 could undermine the public interest"<sup>1</sup>.
9. On the other hand, once the Council has come to the conclusion that release would indeed undermine the public interest in this area, it has no choice but to refuse access, because "it is clear from the wording of Article 4(1)(a) of Regulation No 1049/2001 that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests"<sup>2</sup>.
10. Therefore, the Council enjoys a wide discretion in assessing the probable impact of the release of a document on public security and international relations and is barred from taking into account other legitimate interests in order to override the conclusion that giving access to a document would harm the protected interests and grant access nonetheless.

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<sup>1</sup> ECJ case C-266/05, Sison, para. 35.

<sup>2</sup> ECJ case C-266/05, Sison, para. 46.

*The harm to the public interest as regards international relations and the Council's decision-making process*

11. Document 8381/07 contains draft negotiating directives for Association agreements with the Andean Community and its member countries. Although these negotiations have already been concluded with Colombia, Peru and Ecuador, they continue to be the basis for possible negotiations with Bolivia. Therefore, even if the negotiations have been concluded with some members of the Andean Community, disclosure of these negotiating directives would weaken the position of the EU in possible future negotiations with Bolivia. It would allow to measure the distance between the objectives as stated in the negotiating directives and the results achieved and make prospects for future negotiations, which in turn could undermine the negotiating position of the Union and therefore the public interest as regards international relations.
  
12. Point 2.3 of document 7191/10 refers to the Free Trade Agreement with Colombia and Peru. Although the Agreement with Colombia and Peru is being provisionally applied, the Protocol of Accession of Ecuador to this Agreement has not yet been signed and covers the same concerns as the Free Trade Agreements with Colombia and Peru. In addition to the fact that Bolivia might want join this agreement, there are other trade agreements currently under negotiation, such as with Mercosur or Vietnam among others, that follow a similar model. As regards future negotiations, it should be noted that all modern free trade agreement negotiations follow a similar model. Release of the views expressed by different Council Members in relation to the outcome of the negotiations of the Free Trade Agreement with Colombia and Peru would, therefore, weaken the position of the EU in ongoing and future international negotiations with countries in the area and beyond. Moreover, it could lead to undue external pressure on Council members in light of the views expressed and therefore make it more difficult for the Council to reach an agreement in relation to the conclusion of the Free Trade Agreement with Colombia and Peru.

13. In light of the above, the Council considers that disclosure of the negotiating directives in document 8381/07 and point 2.3 of document 7190/10 would therefore undermine the protection of the public interest as regards international relations and the Council's decision-making process and should therefore be refused.

**Partial access pursuant to Article 4(6) of Regulation (EC) No 1049/2001**

14. The Council has carried out new consultations and has thoroughly re-examined the requested documents in accordance with Article 4(6) of Regulation 1049/2001. It has specifically assessed which parts of the documents could, if disclosed, entail a specific and actual risk for the public interest as regards international relations and the Council's decision-making process as identified above. As a consequence, it has concluded that further access to document 8381/07 cannot be given. As regards document 7190/10 point 2.3, access can now be given to the first paragraph on page 4 with the exception of the 7 last lines. The second paragraph on page 4 can be released in its entirety.

**Conclusions**

15. Having regard to the above, the Council takes the view that full public access to the documents concerned has to be refused pursuant to the third indent of Article 4(1)(a) (protection of the public interest with regard to international relations respectively) and Article 4(3), first subparagraph, (protection of the Council's decision-making process) of Regulation (EC) No 1049/2001. However, having examined the possibility of providing partial access to documents 8381/07 and 7190/10 in accordance with Article 4(6) of Regulation 1049/2001, the Council has come to the conclusion that further access to document 8381/07 cannot be given. However, the applicant may have access to those parts of the point 2.3 of document 7191/10 which are not covered by the said exceptions.

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