



Brussels, 18 May 2016
(OR. en)

8863/16

INF 77
API 52

INFORMATION NOTE

From: General Secretariat of the Council
To: Working Party on Information
Subject: Evaluation of the impact of the Court ruling in case C-280/11 P (Council v. Access Info Europe)

Background

1. From the ruling of the Court of Justice in Case C-280/11 P (Council v. Access Info Europe)¹, it follows that where documents relating to on-going legislative procedures identify Member States which state their positions, public access will be given to the names of those Member States when the document is disclosed, save in duly justified and exceptional cases. At its meeting on 13 December 2013², Coreper was informed about the implications of the judgment of the Court of Justice as regards the handling of applications for public access to documents under Regulation (EC) No 1049/2001³.

¹ Judgment of the Court of Justice (First Chamber) of 17 October 2013 in Case C-280/11 P (Council v Access Info Europe), summarised in the information note from the Legal Service contained in document 15911/13.

² See document 17177/13 and document 7356/14.

³ 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, 31.5.2001, p. 43).

2. At its meeting on 15 May 2014, Coreper held a discussion on the drafting practice of preparatory documents relating to legislative activities. The Committee was invited to consider three options regarding the naming of Member States in documents relating to on-going legislative procedures: 1) to record Member States' names in all such documents; 2) to cease recording Member States' names in all such documents and 3) to continue recording Member States' names in such documents where it is deemed appropriate.
3. The Committee concluded that there is *no legal obligation* to draw up documents which identify Member States indicating their positions, it nevertheless indicated its preference for the so-called "third option", which consists in *continuing to record Member States' names in documents relating to on-going legislative procedures where it is deemed appropriate*. At that occasion, Coreper moreover decided to evaluate the impact and functioning of that option after one year⁴.

Evaluation

4. The evaluation requested by Coreper was carried out in *two stages* during the first half of 2015: A workshop dedicated to the implementation of the Coreper decision was held with the participation of staff from various policy departments within the General Secretariat of the Council (GSC). In addition, GSC departments providing support to the Council and its preparatory bodies in the legislative area were asked to assess the impact of the Coreper decision on the drafting of preparatory documents.
5. The findings of the two-stage evaluation demonstrated that the GSC departments continued the existing practice of recording Member States' names in preparatory documents, where it is deemed appropriate.

⁴ Cf. documents 8622/1/14 and 10078/14.

Concluding remarks:

6. The outcome of the evaluation carried out in the first half of 2015 indicated that the Coreper decision taken in the light of the Court ruling in case C-280/11 P has not led to changes as regards the drafting practice of individual GSC-services. This practice is in accordance with relevant case-law of the EU Courts.
7. As pointed out by Coreper on 15 May 2014⁵, the existing drafting practice of GSC services, takes into account the following criteria:
 - a. coherence with respect to the practice in a specific file and subject-matter;
 - b. the impact on the efficiency of the Council's decision-making and the Member States' negotiating flexibility that recording and consequently public release of the names of individual Member States would have in the particular case;
 - c. the particular need for Member States to keep track of the evolution of the negotiations;
 - d. other considerations linked to the specific nature of the file or subject-matter, notably its sensitive character.
8. Following the Working Party of Information meeting on 19 May 2016, COREPER is invited to take note of the outcome of the evaluation set out in the present note.

⁵ Cf. document 8622/1/14.