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From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)/Council
Subject: Case before the General Court
T-540/15 Emilio De Capitani v. European Parliament

1. By an application registered with the General Court on 27 November 2015, Mr De Capitani has brought an action before the General Court for the annulment, pursuant to Article 263 TFEU, of the European Parliament's decision to refuse full access to certain documents relating to legislative procedure 2013/0091(COD). The Applicant's request for access pertains in particular to multicolumn tables used in trilogue meetings within the framework of the legislative proposal for a "*Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA* " (the proposed Europol Regulator). The European Parliament refused access to the fourth column of the multicolumn documents, which contains the compromise text agreed by the institutions, on the ground of the protection of the decision-making process under Article 4(3), first subparagraph, of Regulation 1049/2001.

2. The applicant invokes the following grounds in support of his claim for annulment:
 - a) Error in law and misapplication of Article 4(3), first subparagraph, of Regulation 1049/2001 in that the European Parliament failed to show that full disclosure would specifically and effectively undermine the decision-making process, misinterpreted the case-

law of the EU Courts and failed to recognize the existing overriding public interest in disclosure; and

b) Breach of Article 296 TFEU in that the Parliament failed to state reasons as to why full disclosure would effectively and specifically undermine the decision-making process and why there is no overriding public interest in disclosure in this case.

3. The requested multicolumn documents are joint documents drafted by the Council, the European Parliament and the European Commission in the framework of the ongoing legislative procedure relating to the proposed Europol Regulation. As a consequence, the Council had been consulted by the European Parliament before the adoption of the contested decision in line with Article 4(4) of Regulation 1049/2001, and in that occasion expressed its opposition to disclosure on the ground that disclosure would have undermined the ongoing decision making process (Article 4(3) of Regulation 1049/2001). The position expressed by Parliament in the contested decision appears therefore in line with the Council's one.
4. Moreover, the General Court's findings in the present case will establish an important precedent for the handling of requests for public access to trilogue documents in other legislative files. More specifically, the General Court will have to decide on the scope of the exception relating to the protection of the decision making process in the context to the legislative domain (Article 4(3) of Regulation 1049/2001) and will likely touch upon issues concerning the nature and organisation of trilogues which appear of great institutional relevance for the Council.
5. The Council Legal Service therefore recommends that the Council intervene in the present case and support the conclusions of the European Parliament. Following the publication of the case in the Official Journal on 30 November 2015, the deadline for introducing a request to intervene expires on 21 January 2016.

6. In the light of the above, Coreper is invited to recommend to the Council that it approves the introduction of a request to intervene in Case T-540/15 in support of the conclusions of the European Parliament.
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