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CM 2744/20

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API
PROCED

COMMUNICATION

WRITTEN PROCEDURE

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Subject: PUBLIC ACCESS TO DOCUMENTS
– Confirmatory application No 08/c/01/20
– Outcome of the written procedure initiated by CM 2743/20

Delegations are informed that the written procedure opened by CM 2743/20 of 24 June 2020 was completed on 2 July 2020 and that the majority of delegations agreed to the approval of the Council's reply to the above-mentioned Confirmatory application, as set out in document 8689/20.

The statements by Member States are reproduced in the Annex to this CM.

The above statements will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

Statement by Ireland

Ireland does not agree with the draft reply to Confirmatory application 08/c/01/20 "WKS from Working Party on Company Law". Ireland recalls that the principle of transparency is particularly pressing in relation to decision-making processes of a legislative nature and believes the release of the specific documents referred to in this confirmatory application would not tend to undermine the decision-making process.

Statement by Finland

Finland cannot concur with the interpretation of Regulation 1049/2001 referred to in the draft reply, especially in light of the Turco case (C-39/05 and C-52/05) and the De Capitani case (T-540/15) and taking into consideration the importance of openness in legislative procedures emphasized by the Lisbon Treaty.

Statement by Latvia

Latvia considers that taking into account the specific circumstances and context of the present case, access could be granted to the four requested documents. This is in accordance with its initially stated position. Each situation will be assessed on its own merits.

Statement by Italy

We would confirm our consistency with the initial position proposed by the Council. Indeed, transparency should be granted through the availability of EU documents and discussions, especially for those negotiations that are not conclusive and no conclusion is foreseen in the short – mid term.

Statement by The Netherlands

The Netherlands cannot concur with the draft reply to confirmatory application 08/c/01/20. The Netherlands emphasizes the importance of access to documents and transparency to improve EU's legitimacy. This is particularly important with regard to transparency for documents that relate to the legislative procedures. The Netherlands is of the opinion that the reply does not strike the right balance between the principle of public access to legislative documents and the protection of the decision-making process of the Council.

Statement by Estonia

Estonia is of the opinion that the release of the documents would not undermine the decision-making process as the arguments in the draft reply are not justified and thus do not outweigh the principle of transparency. We believe that publication of all relevant documents would be advantageous for proper conclusion of the negotiations of this contentious legislative act.

Statement by Sweden

Sweden cannot concur with the draft reply. Taking into account the specific circumstances in this case/matter and the settled case-law of the Court (i.e. De Capitani, point 78 and 99), Sweden considers that it is not sufficiently motivated how disclosure of these documents specifically and actually would undermine the ongoing decision-making process and why the risk of these interests being undermined is reasonable and foreseeable and not purely hypothetical.

Statement by Denmark

Denmark cannot concur with the draft reply to confirmatory application 08/c/01/20. Denmark emphasizes the importance of access to documents and transparency to improve EU's legitimacy. This is particularly important with regards to transparency for documents that relate to the legislative procedures. Denmark is of the opinion that the reply does not strike the right balance between the principle of public access to legislative documents and the protection of the decision-making process of the Council.

Statement by Lithuania

Lithuania cannot agree with the draft reply to Confirmatory application 08/c/01/20 "WKS from Working Party on Company Law", set out in doc. 8689/20. Lithuania considers that the interpretation of Regulation 1049/2001 and relevant ECJ case-law allows in this specific case to grant access to the requested documents.
