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REV 2

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PROCED

COMMUNICATION

WRITTEN PROCEDURE

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Subject: PUBLIC ACCESS TO DOCUMENTS
– Confirmatory application No 26/c/01/20
– Outcome of the written procedure initiated by CM 1065/21

Delegations are informed that the written procedure opened by CM 1065/20 of 8 January 2021 was completed on 14 January 2021 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 13399/20.

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 Latvia

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

Statement by Sweden

Sweden cannot concur with the draft reply. Taking into account the specific circumstances in this case 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 Finland, supported by Ireland

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 the Netherlands, supported by Ireland

The Netherlands cannot concur with the draft reply to confirmatory application 26/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 (e.g. case T-540/15 De Capitani). 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 Portugal

Portugal has reviewed its position in light of the latest developments in this dossier, taking into consideration the importance of openness in legislative procedures and ECJ-jurisprudence in this regard – and noting, however, that each exception related to the protection of the decision-making process of the Council will be assessed on its own merits.

Statement by Lithuania

Lithuania is not in a position to concur with the draft reply to the confirmatory application, as set out in doc. 13399/20. Lithuania considers that the interpretation of Regulation 1049/2001 and relevant ECJ jurisprudence allows in this specific case to grant access to the requested documents.

Statement by Italy

We would confirm our consistency with the initial position. In our opinion, 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.
