



Press and Information

General Court of the European Union
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Judgment in Case T-331/11
Besselink v Council

The General Court annuls in part the Council decision refusing access to a document concerning the accession of the EU to the Convention for the Protection of Human Rights and Fundamental Freedoms

Any citizen of the EU, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions subject to certain exceptions¹. In particular, the institutions refuse access where disclosure would undermine the protection of the public interest in the field of international relations.

On 23 January 2011, Mr Leonard Besselink, Professor of Constitutional Law in the Faculty of Law of the University of Utrecht (Netherlands), requested access to a document containing a draft decision of the Council of the European Union authorising the Commission to negotiate the agreement on the accession of the EU to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). That document also included the negotiating directives to be complied with by the Commission in its capacity as negotiator for the EU.

By decision of 1 April 2011, the Council refused full access to the document and gave access to a partly declassified version of that document, considering that its disclosure would undermine the protection of the public interest in the field of international relations. The Council contended in particular that the document would reveal the EU's strategic objectives, which would weaken its negotiating position. Furthermore, it stated that the disclosure of a preparatory document would undermine the climate of confidence among the actors involved in the negotiations and that could have negative consequences for future international negotiations of the EU.

Mr Besselink brought an action seeking annulment of the Council decision. In his opinion, the Council erred in law by incorrectly applying the exception, provided for by Regulation No 1049/2001, relating to the protection of the public interest in the field of international relations. Furthermore, he claims that the Council infringed that regulation and the principle of proportionality by failing to consider whether it was appropriate to grant wider partial access to the document, thus restricting the refusal to the parts of that document for which it was appropriate and strictly necessary.

In its judgment delivered today, **the General Court annuls in part the Council decision.**

First, **the Court holds that the Council made a manifest error of assessment in refusing access to Negotiating Directive No 5, relating to accession to additional protocols to the ECHR.** The latter was communicated to the negotiating partners and it cannot therefore validly be argued that its disclosure would weaken the EU's negotiating position. Furthermore, it contains only the EU's position on the EU's accession to those protocols and does not contain, for example, the position of the EU's negotiating partners or the EU's position on the position of its partners.

¹ 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 2001 L 145, p. 43).

Thus, disclosure of that part of the document cannot jeopardise the climate of confidence between the parties participating directly or indirectly in those negotiations.

Secondly, **concerning the other negotiating directives, the Court considers that the Council was entitled to consider that disclosure of the detailed contents thereof could undermine the public interest as regards international relations.** Therefore, even though it is a preparatory document, in the context of international negotiations, the positions taken by the EU are subject to change depending on the course of those negotiations and on concessions and compromises made in that context by the various stakeholders. In that context, it cannot be precluded that disclosure by the EU, to the public, of its own negotiating positions, when the negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating capacity of the EU.

Since the disclosure of the document requested could undermine the public interest in the field of international relations (with the exception of Negotiating Directive No 5) the Council was required to consider next, in the light of the principle of proportionality, whether it was appropriate to grant partial access to the document, by confining any refusal to information covered by the relevant exception. In the present case, the Council granted very restricted partial access, limited, essentially, to its introductory part and to part of the draft Council Decision. In that regard, the Court considers that it is apparent upon examining the document at issue that certain parts of the negotiating directives could have been disclosed without the public interest of the EU as regards international relations being affected. That is the case for the parts of the draft decision and the negotiating directives in which the Council merely referred to the principles that should govern the negotiations for the accession of the EU to the ECHR. The same also applies to the negotiating directives in which the Council establishes, at most, a list of questions to be addressed in the negotiations, but without specifically answering them. The Court considers that those findings lead to the conclusion that the analysis carried out by the Council concerning the extent of partial access is unlawful. Therefore, the Court declares that, **concerning the parts of the document whose disclosure could undermine the public interest in the field of international relations, the Council has not fulfilled its obligation to limit its refusal solely to the information covered by the exception on which it relied.**

Consequently, the Court annuls the Council decision in so far as it refuses access to Negotiating Directive No 5 and to the undisclosed parts of the document, which set out the principles laid down by the EU Treaty that must govern negotiations, or which set out only the questions to be addressed in the negotiations. Mr Besselink's action as to the remainder is dismissed.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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