

Case T-14/98

Heidi Hautala

v

Council of the European Union

(Right of public access to Council documents — Decision 93/731/EC —
Exceptions to the principle of access to documents — Protection of the public
interest concerning international relations — Partial access)

Judgment of the Court of First Instance (First Chamber), 19 July 1999 . . . II-2492

Summary of the Judgment

1. *Actions for annulment — Jurisdiction of the Community judicature — Decision refusing public access to documents covered by Title V of the Treaty on European Union*
(EC Treaty, Arts 151(3) and 173 (now, after amendment, Arts 207(3) EC and 230 EC); Treaty on European Union, Art. J.11 (Arts J to J.11 of the Treaty on European Union have been replaced by Arts 11 EU to 28 EU); Council Decision 93/731)
2. *Council — Right of public access to Council documents — Decision 93/731 — Refusal of a confirmatory application for access — Consideration of the application — Obligation — Scope*
(Council Decision 93/731, Arts 4 and 7(1))

3. *Council — Right of public access to Council documents — Decision 93/731 — Exceptions to the principle of access to documents — Protection of the public interest — International relations — Decisions refusing access taken by the Council on the basis of its political responsibilities — Judicial review — Scope — Limits*
(Treaty on European Union, Arts J to J.11 (Arts J to J.11 of the Treaty on European Union have been replaced by Arts 11 EU to 28 EU); Council Decision 93/731, Art. 4(1))
4. *Council — Right of public access to Council documents — Decision 93/731 — Exceptions to the principle of access to documents — Where a decision refusing access is taken without first examining the possibility of partial access (to data not covered by the exceptions) — Unlawful*
(Council Decision 93/731, Art. 4(1))

1. The Court of First Instance has jurisdiction to determine an action for annulment of a Council decision refusing access to documents, even where the documents in question have been adopted on the basis of provisions coming under Title V of the Treaty on European Union concerning a common foreign and security policy.

fact that, under Article L of that Treaty (now, after amendment, Article 46 EU), the Court of First Instance does not have jurisdiction to assess the lawfulness of acts falling within Title V does not exclude its jurisdiction to rule on public access to those acts.

Decision 93/731 on public access to Council documents applies to all Council documents, irrespective of their content. Under Article J.11(1) of the Treaty on European Union (Articles J to J.11 of that Treaty have been replaced by Articles 11 to 28 EU), acts adopted pursuant to Article 151(3) of the EC Treaty (now, after amendment, Article 207(3) EC), which is the legal basis for Decision 93/731, are applicable to measures within the scope of Title V of the EU Treaty. Thus, in the absence of provisions to the contrary, documents relating to Title V of the Treaty on European Union are covered by Decision 93/731. Accordingly, the

2. It follows from the scheme of Decision 93/731 on public access to Council documents that a decision to reject a confirmatory application for access, submitted pursuant to Article 7(1) of that Decision, must be based on a genuine examination of the particular circumstances of the case, the purpose of examining a confirmatory application being to enable the Council to determine whether disclosure of the document falls within one of the exceptions set out in Article 4 of Decision 93/731 and whether the general principle that the public should have access to Council documents must therefore be displaced.

3. When, in the exercise of its discretion, the Council must determine the possible consequences for the international relations of the European Union, were a report prepared by the Working Group on Conventional Arms Exports to be disclosed, it does so on the basis of the political responsibilities conferred on it by Title V of the Treaty on European Union. That being so, review by the Court of First Instance of a decision refusing access to such a report, on grounds of the public interest exception — with regard, specifically, to international relations — provided for in Article 4(1) of Decision 93/731 on public access to Council documents, must be limited to verifying whether the procedural rules have been complied with, whether the contested decision is properly reasoned and the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers.

4. The exceptions provided for in Article 4(1) of Decision 93/731 on public access to Council documents must be interpreted in the light of the principle of the right to information and the principle of proportionality. It follows

that, before refusing access to a document unconditionally, the Council is obliged to examine whether partial access should be granted, that is to say, access to the information not covered by the exceptions.

As regards the principle of the right to information, Decision 93/731 seeks to give effect to the principle of the largest possible access for citizens to information with a view to strengthening the democratic character of the institutions and the trust of the public in the administration. Secondly, as regards the principle of proportionality, the aim of protecting the public interest with regard to international relations may be achieved even if the Council does no more than remove, after examination, the passages in the contested report which might harm international relations.

Consequently, where the Council has not made an examination along those lines, a Council decision refusing access to such a report is vitiated by an error of law and must be annulled.