JUDGMENT OF THE GENERAL COURT (Third Chamber)

22 March 2011 (*)

(Access to documents – Regulation (EC) No 1049/2001 – Document concerning an ongoing legislative procedure – Partial refusal of access – Action for annulment – Period allowed for bringing proceedings – Admissibility – Disclosure by a third party – Interest in bringing proceedings not lost – Identification of the Member State delegations which made proposals – Exception relating to the protection of the decision-making process)

In Case T-233/09,

**Access Info Europe,** established in Madrid (Spain), represented by O.W. Brouwer and J. Blockx, lawyers,

applicant,

v

**Council of the European Union,** represented by C. Fekete and M. Bauer, acting as Agents,

defendant,

supported by

**Hellenic Republic,** represented by E.-M. Mamouna and K. Boskovits, acting as Agents,

and by

**United Kingdom of Great Britain and Northern Ireland,** represented by E. Jenkinson and S. Ossowski, acting as Agents, and by L.J. Stratford, Barrister,

interveners,

ACTION for annulment of the Council's decision of 26 February 2009 refusing access to certain information, contained in a note of 26 November 2008, concerning a proposal for a regulation regarding public access to European Parliament, Council and Commission documents,

THE GENERAL COURT (Third Chamber),

composed of J. Azizi, President, E. Cremona and S. Frimodt Nielsen (Rapporteur), Judges,

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 6 October 2010,

gives the following

**Judgment**

**Legal context**

1 Under Article 255 EC:

‘1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.

2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.

3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.’

2 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) lays down, pursuant to Article 255(2) EC, the principles, conditions and limits governing the right of access to those documents.

3 Article 4 of Regulation No 1049/2001 sets out a number of exceptions to the right of access to European Parliament, Council and Commission documents, which Article 2 of that regulation grants to any citizen of the European Union and to any natural or legal person residing or having its registered office in a Member State.

4 Specifically, the first subparagraph of Article 4(3) of Regulation No 1049/2001 provides:

‘Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’

5 Under Article 207(3) EC:

‘The Council shall adopt its Rules of Procedure.

For the purpose of applying Article 255(3) [EC], the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the

Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.'

**Facts**

6 By email of 3 December 2008, the applicant association – Access Info Europe – applied to the Council under Regulation No 1049/2001 for access to a note of 26 November 2008 from the Secretariat General of the Council to the Working Party on Information set up by the Council, concerning the proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents ('the requested document'). That document contains the proposals for amendments, or for re-drafting, entered by a number of Member States at the meeting of the working party on 25 November 2008.

7 By email of 17 December 2008, the Council granted Access Info Europe partial access to the requested document. The version sent to Access Info Europe included the proposals referred to above but did not make it possible to identify the Member States which had put those proposals forward. As justification for refusing to provide that information, the Council stated that its disclosure would seriously undermine the decision-making process, that there was no overriding public interest in disclosure and that, in consequence, the exception laid down in Article 4(3) of Regulation No 1049/2001 could be applied.

8 By email of 16 January 2009, Access Info Europe submitted a confirmatory application under Article 7(2) of Regulation No 1049/2001.

9 By decision adopted on 26 February 2009 ('the contested decision'), the Council – through its Secretariat General – repeated its refusal, on the basis of Article 4(3) of Regulation No 1049/2001, to disclose the parts of the requested document which made it possible to identify the Member States which had entered the various proposals communicated at the meeting of the Working Party on Information of 25 November 2008. Following a request from Access Info Europe concerning the progress of the procedure, the Council sent it the contested decision in an email dated 3 April 2009. In that email, the Council states also that it had already sent Access Info Europe a copy of the contested decision in a letter sent on 26 February 2009.

10 In the contested decision, the Council puts forward the following reasons to establish that disclosure of the identity of the Member States which had entered the various proposals for amendments would seriously undermine the Council's decision-making process and that there was no overriding public interest in such disclosure:

'The Working Party on Information, the Council's preparatory body responsible for the proposal, has met several times to carry out a first examination of the proposal [for a regulation regarding public access to documents, submitted by the Commission on 30 April 2008 and currently being debated by both branches of the legislative authority under the co-decision procedure]. In the framework of these discussions, delegations have put forward preliminary views on the modifications contained in the Commission proposal. These discussions are still in a preliminary stage and no convergence of views has been recorded and no conclusions have been drawn on the issues raised. The written contributions contained in the requested document relate to three

particularly sensitive issues in the context of the preliminary discussions within the Council, which have not, until now, been [the] subject of detailed discussions in the Working Party on Information. In view of the early stage of the decision-making process where thorough discussions have not yet taken place on the delicate issues raised in the requested document and a clear approach has not yet emerged on these issues, disclosure of the name of the delegations that have made the proposals contained in the document would adversely affect the efficiency of the Council's decision-making process by compromising the Council's ability to reach an agreement on the dossier, and, in particular, narrow those delegations' room for compromise within the Council.

In fact, the risk of seriously undermining the Council's decision-making procedure is reasonably foreseeable and not purely hypothetical. If it were to be accepted that such documents containing the written position of delegations on particularly sensitive issues were to be disclosed in their entirety in an ongoing decision-making procedure, delegations would be induced to cease submitting their views in writing, and instead would limit themselves to oral exchanges of views in the Council and its preparatory bodies, which would not require the drawing up of documents. This would cause significant damage to the effectiveness of the Council's internal decision-making process by impeding complex internal discussions on the proposed act, and it would also be seriously prejudicial to the overall transparency of the Council's decision-making.

The Council has weighed the public interest relating to the efficiency of its internal decision-making against the public interest in increased openness, which guarantees that the EU institutions enjoy greater legitimacy and are more accountable to the citizens, in particular when they act in their legislative capacity. It was precisely as a result of this balancing that the Secretariat General decided, in reply to [the] initial request, to release the content of the requested document, whilst suppressing the name of the respective delegations. This solution enables, on one hand, citizens to scrutinise, in accordance with the democratic principles, the information which forms the basis of the proposed legislative act under discussion within the Council, and on the other, to preserve the effectiveness of the Council's decision-making process, as explicitly provided for in Article 207(3) TEC.

The Council has also examined whether it would be possible to assess, on a deletion-by-deletion basis, whether the name of the Member States concerned could be released. However, this option was rejected because it would lead to very arbitrary assessments which themselves could be challenged. This approach does not, of course, prevent the Member State delegations concerned from making public their own position, as they see fit.'

**Procedure and forms of order sought**

11 By application lodged at the Registry of the General Court on 12 June 2009, Access Info Europe brought the present action.

12 By order of 23 November 2009, the President of the Third Chamber of the General Court granted the Hellenic Republic and the United Kingdom of Great Britain and Northern Ireland leave to intervene in the proceedings in support of the form of order sought by the Council.

13 Acting upon a report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure. By way of measures of organisation of procedure, the Council was requested to answer a number of questions and to produce a copy of various Council documents, relating to the proposal presented by the Commission on 30 April 2008 for a regulation regarding public access to documents, which are available to the public at that stage of the legislative procedure.

14 By letter of 29 July 2010, the Council submitted its replies to the Court's questions and produced the documents requested, in relation to which Access Info Europe was able to comment at the hearing.

15 At the hearing on 6 October 2010, the parties presented oral argument and answered the questions put to them by the Court.

16 Access Info Europe claims that the Court should:

– annul the contested decision;

– order the Council to pay the costs incurred by Access Info Europe and by the interveners.

17 The Council contends that the Court should:

– dismiss the action as clearly inadmissible;

– in the alternative, dismiss the action as unfounded;

– order Access Info Europe to pay the costs.

18 The Hellenic Republic contends that the Court should dismiss the action.

19 The United Kingdom contends that the Court should:

– dismiss the action;

– order Access Info Europe to pay the costs.

**Law**

*Admissibility*

The point at which time starts to run for the purposes of bringing proceedings

– Arguments of the parties

20 The Council submits that the action is manifestly inadmissible because it is out of time. The time allowed for bringing proceedings, laid down in the fifth paragraph of Article 230 EC, did not start to run on 3 April 2009, the date on which the contested decision was sent to Access

Info Europe by email, but on 26 February 2009, the date on which the Council sent it that decision by unregistered post. The decision contested in the present case was adopted by the Council on 26 February 2009. The covering letter for that decision was finalised and signed on the same day, then registered at the dispatching service and immediately dispatched by unregistered surface post to the address indicated by Access Info Europe. The Council maintains that, in eight years of applying Regulation No 1049/2001, no reply has ever been reported to it as missing. Accordingly, the Council had every reason to expect that the contested decision reached Access Info Europe. Consequently, the time allowed for bringing proceedings, which started to run on 26 February 2009, expired on 6 May 2009, the end of the two-month period extended by a period of 10 days on account of distance, in accordance with Article 102(2) of the Rules of Procedure of the General Court. The action is therefore out of time, since it was brought on 12 June 2009, that is to say, more than five weeks after the expiry of the time allowed.

21 On the assumption that the regularity of the notification cannot be established beyond doubt, the Council states that Access Info Europe has had the opportunity to take cognisance of the contested decision as from 26 February 2009. In the present case, the draft reply to the confirmatory application has been publicly available since 20 February 2009, through the Council's document register. Furthermore, that draft was sent to Access Info Europe on 2 March 2009, in response to its request, while the information relating to the adoption of that draft was in the public domain since 26 February 2009. By waiting a month, until 3 April 2009, before requesting communication of the text adopted on the basis of the draft reply sent on 2 March, Access Info Europe did not comply with what the Council considers to be a reasonable period for taking cognisance of the contested decision.

22 Access Info Europe claims that it did not receive the Council letter informing it of the contested decision before 3 April 2009, the date on which it received notification of the contested decision by email. With regard to the assertion that it could have found out about the contested decision by consulting the Council's public register, Access Info Europe points out that the register referred to by the Council contains only a draft answer and not the final document.

– Findings of the Court

23 Under the fifth paragraph of Article 230 EC, proceedings for annulment must be instituted within two months of the publication of the measure, or of its notification to the applicant or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

24 Under Article 102(2) of the Rules of Procedure, the period of time allowed for commencing proceedings is to be extended on account of distance by a single period of 10 days.

25 It follows also from Article 254(3) EC that decisions are to be notified to those to whom they are addressed and to take effect upon such notification.

26 In the present case, it is common ground that the contested decision was communicated by the Council to Access Info Europe on 3 April 2009. That decision was attached as an annex to an email from the Council by which the Secretariat General answered an email from Access Info

Europe asking to be informed as to the progress of the procedure. Access Info Europe confirms that it took cognisance of that answer on 3 April 2009, which makes it possible to establish that the contested decision was notified to its addressee for the purposes of the Treaty.

27 That finding is not called into question by the Council's argument seeking to establish that the contested decision was notified to Access Info Europe on 26 February 2009. The Council has failed to show that the letter which, according to its statement, it sent to Access Info Europe did indeed reach its addressee before 3 April 2009. The Council acknowledges, moreover, that it sent the contested decision by 'unregistered post', which means that it cannot establish that that letter was received by its addressee in Spain, still less the date of receipt. In the absence of a registered letter with acknowledgement of receipt, or an email or fax followed by an acknowledgement of receipt, the Council's contention that the answer which it sent on 26 February 2009 was received by Access Info Europe on the same day or shortly afterwards remains unsubstantiated. In consequence, the point at which time started to run for the purposes of bringing proceedings is 3 April 2009, the date on which the Council notified Access Info Europe by email of the contested decision.

28 Moreover, as regards the Council's argument that Access Info Europe took cognisance of the content of the contested decision by taking cognisance of the draft confirmatory reply on 2 March 2009, it should be noted that it follows from the very wording of the fifth paragraph of Article 230 EC that the criterion of the day on which the contested decision came to the knowledge of the applicant, as the start of the period for instituting proceedings, is subsidiary to the criteria of publication or notification (see Case T-190/00 *Regione Siciliana* v *Commission* [2003] ECR II-5015, paragraph 30 and the case-law cited). Consequently, the date on which Info Europe took cognisance of the contested decision – even if it were shown – could not be regarded as the point at which time started to run for the purposes of bringing proceedings, given that, in the present case, that decision was notified to the applicant on 3 April 2009 pursuant to Article 254(3) EC. Where the addressee has been notified, it is the date of notification which is to be taken into consideration for the purposes of calculating the time allowed under the fifth paragraph of Article 230 EC for bringing proceedings, not the date on which cognisance was taken, which comes into play only as an alternative in cases where there is no notification. In any event, as regards the actual proof that cognisance was taken, it is not disputed by the parties that the only document available on the Council's public register is a draft decision and not the contested decision. Accordingly, Access Info Europe was not in a position to take cognisance of the content and grounds of the measure ruling on its confirmatory application in the light of Regulation No 1049/2001.

29 Consequently, given that the application initiating proceedings was lodged at the Court Registry on 12 June 2009 – that is to say, within the two months allowed from the notification of the contested decision on 3 April 2009, extended by a single 10-day period – it is not out of time. The preliminary plea of inadmissibility put forward by the Council to that effect must be rejected.

Access Info Europe's interest in having the contested decision annulled

30 In the defence, the Council states that a full version of the requested document has been accessible to the public on the internet site of the organisation Statewatch since 26 November 2008. In answer to the questions asked by way of measures of organisation of procedure, the Council specified the address of the website where it was possible to gain access to that version. It also referred to a report of the House of Lords Select Committee on the European Union ('the European Union Committee') concerning the United Kingdom's position on the proposal to amend Regulation No 1049/2001, which describes a meeting organised on 18 March 2009 with the representatives of the Government of the United Kingdom during which the consequences of the abovementioned disclosure were mentioned. At the hearing, the Council stated that, even if the unauthorised full disclosure of the requested document by the organisation Statewatch took place very quickly (at the end of November 2008, according to the Council), the Council did not have cognisance thereof when it adopted the initial decision of 17 December 2008 or the confirmatory decision of 26 February 2009 concerning the application for access lodged by Access Info Europe.

31 In the reply, Access Info Europe states that it did not have cognisance of the full version of the requested document at the time when it lodged its application for access to the documents. At the hearing, Access Info Europe also stated that it was able to have cognisance of the full version of the requested document in May or June 2009 following discussions with other associations interested in questions of openness. As a result of that disclosure, Access Info Europe has at the present time a copy of the full version of the requested document.

32 In those circumstances, it might be argued that Access Info Europe is not really affected by the contested decision since it already has the information the disclosure of which it had requested and cannot therefore claim to have a sufficient interest in having the contested decision annulled.

33 In that regard, it is necessary to point out that the applicant's interest in bringing proceedings must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible. That objective of the dispute must, like the interest in bringing proceedings, persist until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it. If the applicant's interest in bringing proceedings disappears in the course of proceedings, a decision of the General Court on the merits cannot bring him any benefit (see Case C-362/05 P *Wunenburger* v *Commission* [2007] ECR I-4333, paragraphs 42 and 43 and the case-law cited).

34 In the present case, the disclosure of the full version of the requested document on the internet site of the organisation Statewatch, as from the end of 2008 – like the taking cognisance of the content of that version by Access Info Europe in May or June 2009 – does not, for the reasons set out below, support the conclusion that Access Info Europe does not have, or no longer has, an interest in applying to have the contested decision annulled.

35 First, at the level of principle, it is settled law that an applicant retains an interest in seeking the annulment of an act of an institution in order to prevent its alleged unlawfulness from recurring in the future. That interest in bringing proceedings follows from the first paragraph of

Article 266 TFEU, under which the institution whose act has been declared void is required to take the necessary measures to comply with the judgment of the Court. However, that interest in bringing proceedings can exist only if the alleged unlawfulness is liable to recur in the future independently of the circumstances which have given rise to the action brought by the applicant (see *Wunenburger* v *Commission*, paragraph 33 above, paragraphs 50 to 52 and the case-law cited). That is the situation in the present case, since, first, Access Info Europe's allegation of unlawfulness is based on an interpretation of one of the exceptions provided for in Regulation No 1049/2001 that the Council is very likely to rely on again at the time of a new request and, secondly, Access Info Europe – as an association seeking to promote openness within the European Union – is likely to submit, in future, similar requests for access to the same type of document.

36 Secondly, it should be noted that the body responsible for disclosing the information in question to Access Info Europe is not the Council, which would thereby acknowledge the public interest in having such information disclosed, but a third party which did not comply with the rules applicable to public access to Council documents. Access Info Europe states in that regard that, at the time when it lodged its initial application and its confirmatory application for access to the documents, it was not aware that that information was available on the internet site of the organisation Statewatch, and the Council states that it was similarly unaware when it responded to those applications. Accordingly, neither Access Info Europe nor the Council had cognisance of that fact at the time of the administrative procedure which led to adoption of the contested decision. Access Info Europe is entitled, therefore, to obtain a ruling from the Court on the lawfulness of that decision, which adversely affects it, since it is as yet the only decision which has been notified to it, and it grants the applicant association only partial access to the requested document on the basis of one of the exceptions provided for in Regulation No 1049/2001. The behaviour of the organisation Statewatch is not relevant for the purposes of assessing Access Info Europe's interest in having such a decision annulled (see, to that effect, Case T-174/95 *Svenska Journalistförbundet* v *Council* [1998] ECR II-2289, paragraph 69, in which the applicant was already in possession of certain documents requested from the Council, which had been sent to it by the competent authorities of a Member State).

37 It follows from the foregoing that, even though Access Info Europe has been able to obtain the content of the information to which access was refused by the Council, it has an interest in having the contested decision annulled.

*Substance*

38 In support of its application, Access Info Europe puts forward two pleas in law: (i) infringement of the first subparagraph of Article 4(3) of Regulation No 1049/2001 and (ii) failure to state sufficient reasons for the contested decision. It is necessary to start by examining the first plea.

Arguments of the parties

39 Access Info Europe states that Regulation No 1049/2001 seeks to ensure better participation of citizens in the legislative process and to give the greatest effect possible to public

access to documents, in particular in cases where the institutions act as the legislature. Public access to documents of the institutions constitutes the principle and refusal the exception, which must be strictly construed.

40 With regard to the assertion that the room for manœuvre on the part of delegations would be reduced if they were identified, Access Info Europe claims that no explanation has been put forward in the contested decision to substantiate that contention. The delegations express opinions and propose amendments which enable the Council to define its position. Accordingly, public access to those positions makes it possible for those Member States and the institutions to be accountable to citizens. Even if the identification of the delegations were to expose them to a risk of external pressure, that risk is not sufficient, according to Access Info Europe, to justify the application of the exception relied upon, since it is inherent in the requirement of accountability and in the principle of citizen participation on which Regulation No 1049/2001 is based. As regards the entrenchment of positions alleged by the Council, Access Info Europe argues that the mere assertion of the existence of damage does not suffice to prove it. The Council has not shown how disclosure of the requested document on the internet site of the organisation Statewatch undermined the spirit of confidence within the delegations. In addition, the only circumstances in which the position of a delegation needs to be kept hidden is when it wishes to speak with two tongues, adopting one position when it participates in Council meetings and another when it addresses the public, including its own citizens. However, that is not the objective of Regulation No 1049/2001.

41 As regards the contention that the opinions of delegations would cease to be submitted in writing if the delegations were identified, Access Info Europe states that, as a general rule, everything that is written or said in the course of the preparation of a legislative act should be available to the public for information purposes and scrutiny. In the present case, the possible negative effects of the disclosure of the identity of those who entered the proposals would be only minor. There is nothing to support the argument that such disclosure would deter the delegations from submitting their opinions in writing.

42 As regards the existence of an overriding public interest, Access Info Europe submits that, even if the decision-making process were to be affected for the reasons put forward in the contested decision, that interest justifies the identification of the national delegations. Public interest in disclosure is not limited to the ability to scrutinise the Member States or the Council: it also extends to the possibility for citizens to participate in the legislative process. It is not enough, therefore, to make public the positions taken by the delegations without identifying them.

43 In order to substantiate its contention that granting public access to the undisclosed parts of the requested document would reduce the delegations' room for manœuvre, the Council states that Article 255 EC and Regulation No 1049/2001 do not require the legislative process to be completely open. The rules applied by the Council with regard to public access to legislative documents take instead account of the balance referred to in Article 207(3) EC between a greater public access to the Council's legislative activities and the protection of its decision-making process. The Council's Rules of Procedure specify the situations in which it acts in a legislative capacity (Article 7 of Council Decision 2006/683/EC, Euratom of 15 September 2006 adopting

the Council's Rules of Procedure (OJ 2006 L 285, p. 47; 'the Rules of Procedure') and the legislative documents which are to be directly accessible to the public (Article 11(5) and (6) of Annex II to the Rules of Procedure). After the adoption of a legislative act, the documents setting out the individual positions of the delegations are to be accessible to the public (see Article 11(6) of Annex II to the Rules of Procedure). Where discussions are still ongoing, the content of those documents is also to be accessible to the public, with the exception of the names of the delegations which make the proposals and excluding parts covered by the exceptions provided for in Article 4 of Regulation No 1049/2001 (see the guidelines approved by Coreper on 8 March 2002 on certain issues of principle stemming from the application of Regulation No 1049/2001). Although the delegations know that the content of their positions on ongoing legislative files will be made public, they nevertheless expect their names to remain confidential until the adoption of the legislative act. It is therefore in order to protect the delegations' room for manœuvre during preliminary discussions on the Commission proposal that it is necessary to ensure that their names are not disclosed to the public. If written contributions were made fully accessible to the public in an ongoing legislative procedure, this would lead positions of the delegations to become entrenched, since those delegations would lose some of their ability to modify their positions in the course of discussions and to justify before their public a compromise solution, which may differ from their initial position, seriously affecting the chances of finding a compromise.

44 In reply to the claim relating to the lack of evidence that disclosure of the names of the delegations concerned would seriously undermine the ongoing decision-making process, the Council – supported by the Hellenic Republic and the United Kingdom – contends that the fact that the decision-making process would be seriously undermined is established to the requisite legal standard in the contested decision, in particular as regards the existence of a risk which is reasonably foreseeable and not purely hypothetical. First, it is apparent from the contested decision that the discussions within the Council on the Commission proposal were considered to be particularly sensitive. The revision of the Community legislation on the right of public access to documents, perceived by many as a fundamental right, has attracted considerable public attention. Some of the positions adopted in the context of that revision were received with hostility in the media, provoking sharp public criticism. Secondly, the Working Party has not yet discussed the delegations' proposals. Public pressure would therefore risk influencing the ability of delegations freely to present and defend their preliminary positions and, consequently, would distort debate in the Council. If delegations were deprived of the chance of having calm discussions within the Council on sensitive and controversial issues linked to Regulation No 1049/2001, it would make it difficult for the Council to move the revision of the regulation forward. The preliminary positions submitted by the delegations on a technical level do not necessarily correspond to the position defended by the Member State concerned at a later stage of the procedure. In those circumstances, the disclosure of preliminary positions could hinder open discussion within the Council and lead to misunderstandings.

45 In support of the statement made in the contested decision that the identification of the delegations which made proposals would cause delegations to cease submitting their views in writing, the Council states that, as a result of the unauthorised disclosure on the internet of the requested document by the organisation Statewatch, it is in a position to measure the direct damage caused to the decision-making process in such a situation. In the present case, disclosure

of the requested document damaged the spirit of confidence within the Working Party and the delegations have since been particularly cautious in circulating their positions in writing, in particular those which would expose them to public criticism or controversy. The consideration of a legislative proposal is not feasible on the basis of merely oral exchanges between the delegations. If delegations refrained from submitting their positions in writing, citizens would be deprived of the possibility of scrutinising those positions simply because relevant documents would no longer exist, which would seriously undermine the principle of transparency.

46 In reply to the complaint relating to the need to demonstrate the damage actually caused to the decision-making process by the disclosure of the full version of the requested document on the internet site of the organisation Statewatch, the Council – supported by the Hellenic Republic and the United Kingdom – states that the Commission proposal was submitted to the two branches of the legislative authority on 30 April 2008. The legislative file was still at the stage of first reading. Pending the formal conclusion by the European Parliament of its first reading, discussions within the Council have been limited to preliminary exchanges on a technical level in the preparatory bodies, without an immediate prospect of moving negotiations on the legislative file to a political level, where the Council could fix its position on the Commission proposal. The unusual lengthiness of the legislative process is apparent, since the adoption of legislative acts under the co-decision procedure takes on average 16.2 months. The lack of progress in the legislative process is an indicator of the extremely sensitive and controversial nature of this file and of the fact that there is genuine difficulty in reconciling the various positions.

47 So far as the existence of an overriding public interest is concerned, the Council points out that its refusal to disclose the identities of delegations in an ongoing legislative procedure does not hinder the scrutiny, by citizens, of the governments in the Member States. The interest in holding governments accountable for positions which they adopt in respect of a legislative proposal cannot constitute a public interest for the purposes of the regulation. In addition, the United Kingdom observes that general claims as to the desirability of transparency are not sufficient to constitute an overriding public interest in disclosure.

Replies to the written questions of the Court

48 By way of measures of organisation of procedure, the Court put written questions to the Council concerning, in particular, the statement in the defence that, since 26 November 2008, a full version of the requested document has been accessible on the internet site of the organisation Statewatch, enabling the Council 'to assess the direct harm caused to its decision-making process by public access to all of the delegations' written views in the requested document'. In answer to the first question asked in the context of those measures of organisation of procedure, the Council stated the following in order to explain in more detail and more specifically how the identification of the delegations which made the proposals referred to in the requested document constitutes a serious undermining of its decision-making process.

49 First, the Council contends that, since the disclosure of the full version of the requested document, its Secretariat General has issued only four documents containing written proposals made by delegations relating to the legislative procedure at issue, namely documents No 8778/09 of 17 April 2009, No 9716/09 of 11 May 2009, No 10443/09 of 27 May 2009 and No 11065/09

of 16 June 2009. The Council states in that regard that all the proposals made in those documents seek to amend the Commission's proposal in the direction of greater transparency. No proposals inimical to that principle have been put forward since the disclosure made by the organisation Statewatch. However, in the opinion of the Council, the delegations cannot all be assumed to be in favour of more transparency concerning all the questions examined within the Working Group. That is shown by the fact that there is still no identifiable agreement between the delegations with regard to a Council position on the legislative proposal. Accordingly, the Council considers that the delegations whose views are likely to be exploited by public opinion on the ground that they are inimical to transparency have refrained from submitting their views in writing since the full disclosure of the requested document on the internet site of Statewatch.

50 Secondly, in order to show that the decision-making process was seriously undermined, the Council refers to the interventions of the representatives of the United Kingdom Government before the European Union Committee concerning the state of discussions within the Council on the proposal for a regulation concerning public access to documents. In answer to a question relating to the 'use' of the organisation Statewatch's disclosure of the progress of discussions within the Council, one of the representatives of the United Kingdom Government stated, in particular, that the requested document constituted a 'snapshot' which did not necessarily reflect the consistency of those negotiations. That representative added that it was not therefore certain that removing those discussions and Member State positions from their context had any use. In his opinion, that would create confusion. He added that the problem is to know the extent to which the Member States could be sincere and open if they were constantly afraid that their considerations on the matter could be published. According to the Council, it is clear from the foregoing that full disclosure of the requested document had a negative effect on the sincerity and exhaustiveness of the discussions within the Council Working Group, preventing the delegations from contemplating different solutions and amendments so as to reach agreement on the most controversial questions.

51 Thirdly, the Council asserts that the level of detail in the Secretariat General's reports on the state of the discussions concerning the legislative file within the Council Working Group evolved over time. Although its first report of 26 January 2009, in document No 5671/09, mentioned the names of the delegations which made observations and suggestions concerning the Commission's proposal, the last report dated 22 July 2009 in document 10859/1//09 REV 1 no longer states which delegations made oral observations and suggestions at the meetings of the Group, but uses the expressions 'a certain number of delegations', 'other delegations', 'a large number of delegations', without identifying the delegations in question. In the light of the foregoing, the direct effect of the unauthorised full disclosure of the requested document on the exhaustiveness of the Council's preparatory documents in the context of the legislative file in question can be clearly measured. In view of the fact that the preparatory documents are, above all, working tools for the Council which allow it to measure the progress of work concerning a given decision-making process and, consequently, to facilitate the continuation of the work on the file, it is extremely important that they be as complete as possible. If, as the present case shows, the Council had to take into consideration the risk of non-authorised disclosure, that would without any doubt influence the way in which the preparatory documents are drafted, and sensitive information – such as that referred to above – would no longer be included in them. The preparatory documents could therefore no longer fulfil their main purpose.

52 In response to the second question asked in the context of the measures of organisation of procedure, by which the Court asked the Council to state which were the particularly sensitive questions dealt with in the Member States' proposals set out in the requested document and how those questions could be distinguished from questions likely to be raised in the context of a normal legislative process where different possibilities can be envisaged at the preliminary stage of the discussions, the Council contended that the sensitive nature of the requested document lies in its status and content.

53 Regarding the status of the requested document, the Council notes that, until the date of adoption of the contested decision, the written contributions included in the requested document had not been the subject of detailed discussions within the Council Working Group. Given also that the proposals in the requested document seek to bolster the exceptions provided for in Regulation No 1049/2001, it is reasonable to expect that the external pressure exercised by activist groups in the area of transparency would be particularly detrimental to the ability of delegations to present and defend their preliminary views freely, and that it would consequently be harmful to the candour of debate within the Council.

54 Regarding the content of the requested document, the Council maintains that that document includes proposals designed to strengthen the protection of legal advice, infringement proceedings and personal data by providing for an exclusion from the scope of the proposed regulation and by bolstering the exceptions laid down in the current regulation. In the Council's opinion, those proposals are particularly controversial, not only because they risk being subject to criticism for limiting the principle of the widest possible access to documents, but also because they are likely to be regarded as curtailing the broad interpretation that the Courts of the European Union have given to the principle of transparency. Those proposals would therefore be exceptionally difficult to defend in the face of public opinion, especially if taken out of their specific legislative context.

Findings of the Court

55 In view of the objectives pursued by Regulation No 1049/2001 and especially the fact, noted in recital 2 in the preamble thereto, that the public right of access to the documents of the institutions is connected with the democratic nature of those institutions and the fact that, as stated in recital 4 and in Article 1, the purpose of the regulation is to give the public the widest possible right of access, the exceptions to that right set out in Article 4 of the regulation must be interpreted and applied strictly (Case C-64/05 P *Sweden* v *Commission* [2007] ECR I-11389, paragraph 66).

56 Giving the public the widest possible right of access entails, therefore, that the public must have a right to full disclosure of the requested documents, the only means of limiting that right being the strict application of the exceptions provided for in Regulation No 1049/2001. If only one part of a requested document is covered by an exception, the other parts of the document are to be disclosed. In those circumstances, openness makes it possible for citizens to participate more closely in the decision-making process and for the administration to enjoy greater legitimacy and to be more effective and more accountable to the citizen in a democratic system.

57 As the Court has held, those considerations are clearly of particular relevance where the Council is acting in its legislative capacity, a fact reflected in recital 6 to Regulation No 1049/2001, which states that wider access must be granted to documents in precisely such cases. Openness in that respect contributes to strengthening democracy by enabling citizens to scrutinise all the information which has formed the basis for a legislative act. The possibility for citizens to find out the considerations underpinning legislative action is a precondition for the effective exercise of their democratic rights (Case C-39/05 P *Sweden and Turco* v *Council* [2008] ECR I-4723, paragraph 46).

58 It should also be noted that, under the second subparagraph of Article 207(3) EC, the Council is required to define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in such cases (*Sweden and Turco* v *Council*, paragraph 57 above, paragraph 47).

59 Moreover, the mere fact that a document concerns an interest protected by an exception is not sufficient to justify application of that exception (Case T-2/03 *Verein für Konsumenteninformation* v *Commission* [2005] ECR II-1121, paragraph 69). Such application may, as a rule, be justified only if the institution has previously assessed whether access to the document could specifically and effectively undermine the protected interest. In addition, the risk of a protected interest being undermined must, in order to be capable of being relied on, be reasonably foreseeable and not purely hypothetical (*Sweden and Turco* v *Council*, paragraph 57 above, paragraph 43, and judgment of 11 March 2009 in Case T-166/05 *Borax Europe* v *Commission*, not published in the ECR, paragraph 50).

60 In the present case, it is for the Council to weigh the specific interest which must be protected through non-disclosure of part of the requested document – that is to say, the identity of those who put forward the proposals – against the general interest in the entire document being made accessible, given the advantages of a more open legislative procedure. It is common ground that the requested document was drawn up in the context of the Council's legislative activity. The first paragraph of Article 7 of the Rules of Procedure states that 'the Council acts in its legislative capacity within the meaning of the second subparagraph of Article 207(3) … EC … when it adopts rules which are legally binding in or for the Member States, by means of regulations, directives, framework decisions or decisions, on the basis of the relevant provisions of the Treaties, with the exception of discussions leading to the adoption of internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts (such as conclusions, recommendations or resolutions)'.

61 Examination of the document sent by the Council in annex to its initial reply enables it to be seen that the requested document reproduces in detail the content of the proposals, made in the Council 'Information' Working Group by four delegations representing the Member States, for the amendment or re-drafting of the provisions in the proposal for a regulation relating to public access to documents of the European Parliament, the Council and the Commission. The requested document also sets out in detail the reasons invoked by the representatives of the Member States in support of their proposals. At that stage of the legislative procedure, which is still ongoing, the only information to which access was refused by the Council is the information which makes it possible to identify the four Member States which had put forward proposals for

amendment or re-drafting. The Council notes that, in accordance with the practice which it has established, that information is not in principle accessible to the public until after the adoption of the regulation which is the subject of the Commission proposal (see paragraph 43 above).

62 It follows from the contested decision that the exception relied upon in order to refuse access to the information relating to the identity of those who had made the proposals is that provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001, under which access to a document drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, is to be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

63 In the contested decision, the Council invokes a number of reasons to justify recourse to that exception (see paragraph 10 above). The main reason given is predicated on the claim that disclosure of the information at issue would reduce the delegations' room for manœuvre to find a compromise, which would have the consequence of undermining the Council's ability to reach an agreement. In order to substantiate that claim, the Council relies on two specific points. The first relates to the preliminary nature of the discussions under way in the Council, while the second relates to the sensitive and tricky nature of the proposals made by the representatives of the Member States. The Council asserts also that disclosure of the information at issue would, as a foreseeable effect, cause written communication to be abandoned in favour of oral communication, which would be detrimental to the overall transparency of the decision-making process.

64 Moreover, as the Council argues in the defence and in reply to the Court's questions on that point, disclosure of the full version of the requested document on the internet site of the organisation Statewatch, which took place on the date of adoption of that document – 26 November 2008 – is a factor to take into consideration to illustrate and determine the actual effects that disclosure of information relating to the identity of those who have made proposals can have on the decision-making process in question.

65 Accordingly, it is not the disclosure of the content of the various proposals made by the delegations of the Member States in the course of a legislative procedure which would seriously undermine the decision-making process, but only the disclosure of information relating to the identity of those who made the proposals. The serious undermining of the decision-making process, which is alleged by the Council and which may come to light following the chance disclosure of information relating to the identity of those who made the proposals, would exist only for as long as the legislative measure at issue is under discussion. The present case therefore raises the question whether, for the reasons invoked by the Council, the disclosure, at a time when the Council has not yet taken a decision, of information relating to the identity of those who made the proposals described in the requested document would seriously undermine the Council's decision-making process.

66 However, it must be held that, in the present case, the Council has not established to the requisite legal and factual standard that disclosure of information relating to the identity of those

who made the proposals described in the requested document would seriously undermine the ongoing legislative process relating to the proposal for amending Regulation No 1049/2001.

67 As regards the arguments put forward by the Council in support of its contention alleging that the ongoing legislative process has been seriously undermined because the delegations' room for manœuvre would thereby be reduced, it should be noted that those arguments do not establish that there is a sufficiently serious and reasonably foreseeable risk justifying the application of the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001.

68 In general, the Council contends that the identification, at a time when it has not yet taken a decision, of the delegations which put forward proposals for amendment or re-drafting would cause the positions of those delegations to become entrenched, since they would lose some of their ability to modify their positions in the course of discussions and to justify before their public a solution which may differ from their initial position (see paragraph 43 above). In its answer to the first question put by the Court, the Council even alleges that, as a consequence of the disclosure by the organisation Statewatch of the names of the delegations which made the proposals in the requested document, those delegations, or others, which may wish to make proposals for restricting or reducing openness would no longer do so for fear of the pressure likely to be exerted on them by public opinion (see paragraph 49 above). In other words, the pressure which the public could exert would be such that it would no longer be possible for a delegation to the Council to submit a proposal tending towards the restriction of openness.

69 Those arguments are not sufficiently substantiated to justify, in themselves, the refusal to disclose the identity of those responsible for the various proposals, who must, in a system based on the principle of democratic legitimacy, be publicly accountable for their actions. In that regard, it should be noted that public access to the entire content of Council documents – including, in the present case, the identity of those who made the various proposals – constitutes the principle, above all in the context of a procedure in which the institutions act in a legislative capacity, and the exceptions must be interpreted and applied strictly (see paragraphs 55 to 57 above). If citizens are to be able to exercise their democratic rights, they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information. The identification of the Member State delegations which submit proposals at the stage of the initial discussions does not appear liable to prevent those delegations from being able to take those discussions into consideration so as to present new proposals if their initial proposals no longer reflect their positions. By its nature, a proposal is designed to be discussed, whether it be anonymous or not, not to remain unchanged following that discussion if the identity of its author is known. Public opinion is perfectly capable of understanding that the author of a proposal is likely to amend its content subsequently.

70 The arguments raised in that regard by the Council are too abstract. They are based on the undemonstrated premiss that public opinion would be hostile to any limitation of the principle of transparency. However, the rules relating to transparency have always been based on the definition of a principle – that of public access to the documents of the European Parliament, the Council and the Commission – qualified by numerous exceptions, which may vary in scope and

importance. Accordingly, the institutions, the Member States and public opinion necessarily take into consideration the two elements in the balance – the principle and the exceptions – when they have to take a view on matters relating to transparency. While it is possible to consider that a Member State delegation to the Council or a section of public opinion might be rather in favour of transparency, it is also possible to consider that another delegation or another section of public opinion might be rather in favour of bolstering the exceptions to that principle.

71 In that context, it should be noted that the Council does not set out any reasons enabling it to be understood why it would be necessary to protect the identity of delegations which wish to make proposals tending to limit the principle of transparency on the pretext that a section of public opinion might be against this.

72 More specifically, an examination of the various documents concerning the ongoing legislative procedure which are accessible to the public reveals that a number of proposals were submitted by various Member State delegations following the unauthorised disclosure by the organisation Statewatch of information relating to the identity of those who had made the proposals at issue. For example, it emerges from the public version of document No 9716/09 of 11 May 2009, cited by the Council (see paragraph 49 above), that an unidentified delegation presented a proposal seeking to extend the exception to the principle of transparency relating to court proceedings so that it would cover arbitration and dispute settlement proceedings. That proposal is more restrictive, therefore, than the text proposed by the Commission.

73 Furthermore, as regards the conclusions likely to be drawn from the discussion between the representatives of the United Kingdom Government and the European Union Committee on 18 March 2009, it must be held that the content of that discussion does not substantiate the Council's contention that the unauthorised disclosure by the organisation Statewatch of information relating to the identity of those who made the proposals at issue made it possible to point to a negative effect on the sincerity and exhaustiveness of the discussions within the Council Working Group, preventing the delegations from reaching agreement (see paragraph 50 above). The remarks made by the United Kingdom representative, to the effect, in essence, that it was not certain that removing those discussions and positions from their context had any use and that it would even risk causing confusion, are not evidence of such an adverse effect on the decision-making process.

74 Moreover, the opinion presented in an abstract and generic way by the representative of the United Kingdom Government cannot suffice to establish that the legislative process in question was seriously undermined, particularly in the light of the importance for European Union citizens of the questions debated and the lack of any other evidence in the file showing the reactions of Member State delegations, the media and the public to the unauthorised disclosure of information relating to the identity of those who had made the proposals at issue. Thus, there is nothing in the file to support a finding that there was a reaction which went beyond what could reasonably be expected from the public by any member of a legislative body who proposes an amendment to draft legislation.

75 As for the argument that it is necessary to take into consideration the preliminary nature of the ongoing discussions so as to assess the seriousness of the risk associated with the reduction

of the delegations' room for manœuvre (see paragraph 44 above), it cannot actually be denied that the proposals in question were made at the beginning of a legislative process which is still ongoing. The Commission's proposal for a regulation is dated 30 April 2008 and the proposals for amendment or re-drafting were communicated at the meeting of the Council Working Group on 25 November 2008. The discussions relating to those proposals are not closed and, in any event, the Council has not adopted a decision on the issues covered.

76 Nevertheless, the preliminary nature of the discussions relating to the Commission's proposal for a regulation does not, in itself, justify the application of the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001. That provision does not make a distinction according to the state of progress of the discussions. That provision envisages in general the documents relating to a question where a 'decision has not been taken' by the institution concerned, by contrast with the second subparagraph of Article 4(3), which envisages the situation where a decision has been taken by the institution concerned. In the present case, the preliminary nature of the ongoing discussions and the fact that no agreement or compromise has yet been reached in the Council concerning those proposals do not therefore establish that the decision-making process has been seriously undermined.

77 As regards the argument that it is necessary to take into consideration the particularly sensitive nature of the proposals made by the Member State delegations in the present case (see paragraph 44 above), it should be noted that the various proposals for amendment or re-drafting made by the four Member State delegations which are described in the requested document are part of the normal legislative process, which naturally concerns the citizens who will be affected by that process, all the more so since at issue here is a legislative proposal relating to the rights of citizens to participate in that process. At the stage when those delegations express their views, they attempt merely to assert their preferences or their ideas on a given specific issue, such as the need to protect legal advice or the documents sent to the Court of Justice.

78 Contrary to the assertions which the Council makes, but without providing examples capable of substantiating the existence of a hostile media reception of the proposals at issue or of sharp criticism on the part of the public to which the Council refers, those questions are not 'particularly sensitive' to the point that a fundamental interest of the European Union or of the Member States would be jeopardised if the identity of those who made the proposals were to be disclosed. In that regard, it should be borne in mind that it is not the content of the proposals made by the Member State delegations which is at issue here, but solely the identification of those delegations at that stage of the legislative procedure. Furthermore, it is in the nature of democratic debate that a proposal for amendment of a draft regulation, of general scope, binding in all of its elements and directly applicable in all the Member States, can be subject to both positive and negative comments on the part of the public and media. Lastly, Article 9 of Regulation No 1049/2001 provides for a specific procedure where the document to which access is requested is likely to be defined as a 'sensitive document' and the Council has not invoked that procedure in the present case. Accordingly, the purportedly sensitive nature of the proposals submitted by the Member States and described in the requested document is not such as to justify in the present case the application of the first subparagraph of Article 4(3) of Regulation No 1049/2001.

79 As regards the assertion made by the Council that its delay in expressing a view on the Commission's proposal for a regulation is linked to the difficulties brought about by the disclosure of the information relating to the identity of those who had made the proposals, it should be noted that there are numerous other political and legal explanations which could account for the length of that legislative process, such as the definition of the prerogatives of the European Parliament and the Council in relation to the co-decision procedure, following the entry into force of the Lisbon Treaty, the results of the European Parliament elections and the taking up of its duties by the new Commission.

80 It must therefore be concluded that the risk of compromising the room for manœuvre of the Member State representatives, as alleged by the Council in the context of the ongoing legislative procedure, is not such as seriously to undermine the Council's decision-making process for the purposes of the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001 (see paragraph 59 above). Actual proof of such an adverse effect has not been adduced in the contested decision; nor does it emerge from the evidence in the file.

81 With regard to the arguments that disclosure of the identity of those who made the proposals would have the foreseeable effect of written communication being abandoned in favour of oral communication (see paragraph 45 above), it should be noted that the method used by the Member State representatives to present their proposals for amendments or for revision of the proposal for a regulation does not really have an effect on the Council's practice of describing the content of those proposals so as to allow discussion. With regard to the legislative procedure in question, the Secretariat General considered it appropriate to draw up a document reproducing the various proposals suggested by the Member States so as to enable the Council Working Group to express its views on those proposals. For example, an examination of document 10859/1/09 REV 1, relied upon by the Council in order to show what it considers to be the development of its practice, reveals that the Council Secretariat General relies on both written and oral proposals made by the various Member State delegations in the documents it submits in order to review the development of discussions. In the present case, the risk that written proposals would be abandoned in favour of oral proposals is therefore not such as seriously to undermine the Council's decision-making process for the purposes of the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001.

82 Lastly, as regards the Council's assertion that the practice of its Secretariat General changed between 26 January 2009, the date on which document No 5671/09 still showed the name of the delegations which made observations and suggestions about the Commission's proposal, and 22 July 2009, the date on which Document 10859/1/09 REV 1 no longer specified which delegations had made observations and suggestions about the Commission's proposal but used expressions such as 'a certain number of delegations', 'other delegations', 'a large number of delegations', without identifying the delegations in question, following the unauthorised disclosure to the public by the organisation Statewatch of information relating to the identity of those who had made the proposals (see paragraph 51 above), it should be noted that that change in practice can also be explained by the fact that Access Info Europe brought an action contesting the lawfulness of the contested decision refusing it access to that information. In that regard, it should be noted that, in reply to a question from the Court, the Council stated at the hearing that the change in practice at issue did not apply across the board to all legislative procedures, but

only to the procedure relating to the proposal for a regulation which is the subject of the requested document.

83 In any event, the direct causal link relied upon by the Council between the disclosure to the public of the name of the delegations which made the proposals and the serious undermining of its decision-making process is in no way demonstrated by the documents relied upon by the Council in that connection. Contrary to the assertions made by the Council, an examination of document 10859/1/09 REV 1 reveals that the Member State delegations are still identified by name in the original version and masked in the public version, and that those references seem to cover both historical references to the proposals made, for example, in the requested document and the references to the proposals communicated subsequently by those delegations. Furthermore, Access Info Europe stated at the hearing – without being challenged on that point by the Council – that the use of the abovementioned expressions by the Secretariat General is in no way new or unprecedented.

84 It follows from all the foregoing that the Council infringed the first subparagraph of Article 4(3) of Regulation No 1049/2001 by precluding, in the contested decision, the disclosure of information relating to the identity of those who had made proposals, on the ground that this would seriously undermine its decision-making process, for the reasons set out in that decision.

85 Consequently, it is necessary to annul the contested decision without there being any need to determine whether there is an overriding public interest justifying the disclosure of that information or to consider the second plea, alleging breach of the obligation to state reasons.

**Costs**

86 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to bear its own costs and to pay those of Access Info Europe, in accordance with the form of order sought by Access Info Europe.

87 The first subparagraph of Article 87(4) of the Rules of Procedure provides that the Member States which intervened in the proceedings are to bear their own costs. Accordingly, the Hellenic Republic and the United Kingdom must bear their own costs.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Annuls the Council's decision of 26 February 2009 refusing access to certain information, contained in a note of 26 November 2008, concerning a proposal for a regulation regarding public access to European Parliament, Council and Commission documents;**

2. **Orders the Council to bear its own costs and to pay those incurred by Access Info Europe;**

3. **Orders the Hellenic Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

Azizi Cremona Frimodt Nielsen

Delivered in open court in Luxembourg on 22 March 2011.

[Signatures]

---

* Language of the case: English.