Ms Rachel Hanna
mail: ask+request-14267-fxxxxxx@xxxxxxxx.xxx

Ref. 24/0640-mj/nb

Request made on: 22.02.2024

Dear Ms Hanna,

Thank you for your request for access to documents of the Council of the European Union.¹

Document 5591/21, dated 25 January 2021, is an opinion of the Council's Legal Service on the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part. The opinion provides legal advice on the legal nature of the agreement, related in particular with the question of exercise by the EU of its so-called potential competence and the consequential EU-only nature of the agreement.

In view of its subject-matter, disclosure of the advice and the issues that it deals with would undermine the protection of the public interest as regards international relations under Article 4(1)(a) (third indent) of Regulation (EC) No 1049/2001. This is so not only as regards the relations with the UK, which the requested opinion directly pertains to, but also with other third countries in view of the broad nature of the questions discussed in the requested opinion.

It should be added that the legal advice covered by this opinion deals with issues which are particularly prone to litigation. What is more, the requested opinion touches upon horizontal issues (conclusion of EU-only agreements by the exercise by the EU of its potential EU competence, effects for the Member States of the exercise by the EU of its potential competence, etc.) that have broad implications going beyond the file in question. The legal advice is therefore sensitive and particularly wide in scope.

Full disclosure of such a document would therefore undermine the protection of legal advice under Article 4(2), second indent, of Regulation (EC) No 1049/2001. It would make known to the public an internal opinion of the Legal Service, intended for the members of the Council. The possibility that the legal advice in question be disclosed to the public may lead the Council to display caution when requesting similar written opinions from its Legal Service. Moreover, disclosure of the legal advice could also affect the ability of the Legal Service to effectively defend decisions taken by the Council before the Union courts. Lastly, the Legal Service could come under external pressure which could affect the way in which legal advice is drafted and hence prejudice the possibility of the Legal Service to express its views free from external influences.

As regards the existence of an overriding public interest in disclosure in relation to the protection of legal advice under Article 4(2) of Regulation (EC) No 1049/2001, the GSC considers that, on balance, the principle of transparency which underlies the Regulation would not, in the present case, prevail over the above indicated interest so as to justify disclosure of the document. The GSC also underlines in that regard that in this case the legal advice does not pertain to legislative matters.

In view of the foregoing, the GSC is unable to grant you further access to document 5591/21 beyond the parts of the document already publicly available.

You can ask the Council to review this decision within 15 working days of receiving this reply (confirmatory application).

Yours sincerely,

Fernando FLORINDO

Enclosure