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**INFORMATION NOTE**

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From : Legal Service  
To : Permanent Representatives Committee (Part 2)  
Subject : **Judgment of the Court of Justice 6 December 2001 in Case C-353/99 P  
(Council of the European Union v/Heidi Hautala)**

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**Withdrawal of the appeal brought by the Council against the judgment of  
6 April 2000 by the Court of First Instance in Case T-188/98 (Aldo  
Kuijjer/Council) pending before the Court of Justice (Case C-239/00 P)**

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1. By judgment of 6 December 2001, notified to the Council on 10 December 2001, the Court of Justice dismissed the appeal brought by the Council against the judgment of the Court of First Instance (First Chamber) of 19 July 1999 in Case T-14/98, *Hautala v. Council*, [1999] ECR II-2489<sup>1</sup>. In this appeal, the Council, supported by the Kingdom of Spain, submitted that the Court of First Instance erred in law by interpreting Council Decision 93/731/EC on public access to Council documents as obliging the Council to consider whether access should be granted to those items of information contained in a document which are not covered by the exceptions set out in Article 4 of that decision.

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<sup>1</sup> See the Legal Service's information note on this judgment (document 10831/99 of 14 September 1999).

2. It is not useful to comment in detail the findings of the Court of Justice since this question has in the meanwhile been determined by the legislator. With effect from 3 December 2001, Council Decision 93/731/EC was repealed<sup>1</sup> and its content replaced by Regulation (EC) No. 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents and the new specific provisions regarding access to Council documents contained in Annex III to the Council's Rules of Procedure, as amended by Council Decision 2001/840/EC of 29 November 2001<sup>2</sup>. Article 4(6) of Regulation 1049/2001 provides explicitly that *"if only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released."*
3. Under Article 233 of the EC Treaty, the Council is obliged to take the necessary measures to comply with the judgment of the Court of Justice. In this respect, it is recalled that following the judgment of the Court of First Instance, the Council still refused to grant (partial) access to the document in question<sup>3</sup> as it considered that this would have an impact on the outcome of its appeal against that judgment. Accordingly, access was refused on the basis of Article 4(1) of Decision 93/731/EC (protection of the public interest as regards court proceedings).
4. The Council therefore has to re-examine Ms. Hautala's request in the light of the judgment and Regulation 1049/2001. The General Secretariat will submit in due time a draft decision to this effect to the Information Working Party.
5. Finally, it is appropriate for the Council to withdraw its appeal against the judgment delivered on 6 April 2000 by the Court of First Instance (Fourth Chamber) in Case T-188/98 (*Aldo Kuijer v/Council*)<sup>4</sup> which is currently pending before the Court of Justice (Case C-239/00 P), as the legal questions at issue in this appeal are largely identical to those in Case C-353/99 P. The Legal Service will take the necessary steps to this effect.

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<sup>1</sup> See Article 2 of Council Decision 2001/840/EC of 29 November 2001 amending the Council's Rules of Procedure (OJ L 313 of 30.11.2001, p. 40).

<sup>2</sup> See footnote 2 above.

<sup>3</sup> The report from the Working Group on Conventional Arms Exports to the Political Committee on common criteria to be applied to arms exports, approved by the Political Committee in its meeting on 14-15 November 1996 (COREU SEC/1228 of 31.10.1996).

<sup>4</sup> See the Legal Service's information note of 12 May 2000 (document 8443/00).