



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 30 January 2013**

**5085/13**

**INF 6  
API 4**

**NOTE**

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from :	General Secretariat of the Council
to :	Working Party on Information
Subject :	Public access to documents
	- Confirmatory application made by Mr Piotr Bednarski (No 01/c/01/13)

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Delegations will find attached:

- request for access to document sent to the General Secretariat of the Council on 7 November 2012 ([Annex 1](#))
- reply from the General Secretariat of the Council dated 18 December 2012 ([Annex 2](#))
- confirmatory application dated 23 December 2012 and registered on 3 January 2013 ([Annex 3](#))

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[E-mail message sent on 7 November 2012 - 14:08]

This e-mail has been sent to access@consilium.europa.eu using the electronic form available in the Register application

This electronic form has been submitted in EN

Title/Gender: Mr - Mr

Family Name: BEDNARSKI

First Name: PIOTR

E-Mail: **DELETED**

Occupation:

On behalf of:

Address: **DELETED**

Telephone:

Mobilephone:

Fax:

Requested document(s): 13729/12

Proposal for a Directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV) - Protection of personal data

1st preferred linguistic version: PL - Polish

2nd preferred linguistic version: EN - English

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THE EUROPEAN UNION**

**GENERAL SECRETARIAT**

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Communication  
Transparency*

*- Access to Documents/  
Legislative Transparency*

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[access@consilium.europa.eu](mailto:access@consilium.europa.eu)

Brussels, 18 December 2012

**Mr Piotr Bednarski**

**email:**

**DELETED**

**12/1676-mj/ank**

Dear Mr Bednarski,

We have registered your request of 7 November 2012 for access to document 13729/12. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents<sup>1</sup> (hereafter the "Regulation") and specific provisions of the Council's Rules of Procedure<sup>2</sup>. On 28 November 2012, the time-limit for replying to your application was extended by 15 working days. Having examined the request, the General Secretariat has come to the following conclusion:

Document **13729/12** contains an opinion of the Council's Legal Service relating to the Proposal for a Directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

The requested document contains legal advice, except for its paragraphs 1 - 3. The legal advice analyses the question whether the proposal is in line with personal data protection requirements.

The decision-making process in question is currently ongoing and particularly sensitive. The discussions are at a critical stage which requires a high level of discretion and confidentiality on the discussions which are taking place. The issues analysed in the opinion form an important part of the basis for the discussions. Disclosure of the legal advice would therefore adversely affect negotiations by impeding internal discussions of the Council on the proposal and would hence risk compromising the capacity to reach an agreement on the dossier.

<sup>1</sup> Official Journal L 145, 31.5.2001, p. 43.

<sup>2</sup> Annex II to the Council's Rules of Procedure – Council Decision No 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

Although this legal advice was given in the context of the abovementioned proposal, it is also of a horizontal nature and its scope is broad going beyond the specific legislative process concerned and relevant to other files in discussion. Therefore, disclosure of the document would undermine the protection of legal advice. As mentioned above, the issue analysed in the opinion is of fundamental importance to the proposal and is still subject to discussions. The legal advice is therefore particularly sensitive. The possibility that such legal advice be disclosed to the public may lead the Council to display caution when requesting similarly sensitive written advice from its Legal Service. In addition, disclosure of the legal advice could also affect the ability of the Legal Service to defend effectively a future decision taken by the Council before the Union courts. Finally, 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.

In the view of the foregoing, the General Secretariat of the Council is unable to grant you full access to this document, since disclosure of the document would prejudice two protected interests under Regulation (EC) No 1049/2001, notably the protection of legal advice under Article 4(2), second indent and the institution's ongoing decision-making process under the first subparagraph of article 4(3) of the Regulation.

As regards the existence of an overriding public interest in disclosure in respect of the protected interest, the General Secretariat does not consider that there is any overriding public interest which would prevail over the above two interests so as to justify disclosure of the document.

However, in accordance with Article 4(6) of Regulation 1049/2001, you may have access to paragraphs 1 - 3 of document 13729/12, which are not covered by any exceptions under the Regulation.

#### Statutory remedy notice

Pursuant to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply<sup>3</sup>.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosure

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<sup>3</sup> Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.

**[Confirmatory application - sent by e-mail on 23 December 2012 - 17:02]**

Sir,

Pursuant to Article 7(2) of the Regulation, I hereby submit a confirmatory application requesting the Council to reconsider its position. For many reasons, I consider that access to documents relating to the negotiations currently being finalised concerning the CRD IV and the CRR is of fundamental importance in terms of the need to ensure the transparency of the current process and to allow EU citizens to monitor the state of play of those discussions so that, through the governments and their representatives in the EP, they can express their views regarding regulatory acts whose aim is to ensure both the security of banking institutions (and hence their deposits and the availability of their services) and the stability of the financial markets. Notwithstanding the delicate nature of the negotiations, a lack of information in the wider public domain cannot be justified in view of the significant long-term consequences of the CRD IV and the CRR (in particular as regards capital, liquidity and internal governance). I hereby permit the Council to make my confirmatory application fully public in its Register of documents.

(Complimentary close).

Piotr Bednarski